

919

No. 14588

United States  
Court of Appeals  
for the Ninth Circuit

---

UNITED STATES OF AMERICA,

Appellant,

vs.

ADOLPH G. SUTRO,

Appellee.

ADOLPH G. SUTRO,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

---

Transcript of Record  
In Two Volumes

---

Volume I  
(Pages 1 to 312)

---

Appeals from the United States District Court for the  
Southern District of California,  
Southern Division.

FILED

MAR 10 1955

PAUL P. O'BRIEN,

Phillips & Van Orden Co., 870 Brannan Street, San Francisco, Calif.—2-11-55

CLERK



No. 14588

---

United States  
Court of Appeals  
for the Ninth Circuit

---

UNITED STATES OF AMERICA,

Appellant,

vs.

ADOLPH G. SUTRO,

Appellee.

ADOLPH G. SUTRO,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

---

Transcript of Record  
In Two Volumes

---

Volume I  
(Pages 1 to 312)

---

Appeals from the United States District Court for the  
Southern District of California,  
Southern Division.



## INDEX

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

	PAGE
Answer .....	15
Answer, Amended .....	26
Answer to Second Supplemental .....	43
Appeal:	
Notice of .....	49, 50
Statement of Points Upon on .....	689, 690
Certificate of Clerk .....	687
Complaint .....	3
Complaint, Second Supplemental .....	41
Complaint, Supplemental .....	23
Conclusions of the Court, Award, and Order for Judgment and Attorneys' Fees .....	44
Findings of Fact and Conclusions of Law .....	37
Judgment Awarding Damages and Allowing Attorneys' Fees .....	47
Names and Addresses of Attorneys .....	1
Notice of Appeal, Adolph G. Sutro, Filed Sep- tember 24, 1954 .....	50
Notice of Appeal, United States of America, Filed August 25, 1954 .....	49

INDEX	PAGE
Notice of Appeal, United States of America, Filed September 23, 1954 .....	49
Statement of Points Upon Which Appellant United States of America Intends to Rely on Appeal .....	689
Statement of Points Upon Which Cross-Ap- pellant Adolph G. Sutro Intends to Rely on Appeal .....	690
Transcript of Proceedings .....	51
Witnesses, Defendant's:	
Goode, Stanley E., Jr.	
—direct .....	540, 565
—cross .....	597, 617
—redirect .....	646
—recross .....	649
Vaughan, John L., Jr.	
—direct .....	651
—cross .....	672
Witnesses, Plaintiff's:	
Anderson, Thomas E.	
—direct .....	251
—cross .....	258
—redirect .....	281, 308
—recross .....	284, 311

INDEX	PAGE
Burlake, John Michael	
—direct .....	484, 501
—cross .....	513
—redirect .....	526, 536
—recross .....	530
Ikemi, Tairi	
—direct .....	53
—cross .....	63
—redirect .....	73, 76
—recross .....	78
Sutro, Adolph G.	
—direct .....	109, 118, 184, 680
—cross .....	192, 400, 448, 682
—redirect .....	232, 248, 313, 322, 379, 460, 481
—recross .....	241, 249, 475
Tedford, Clarence P.	
—direct .....	79, 175
—cross .....	99, 178
—redirect .....	103, 526
—recross .....	105



## NAMES AND ADDRESSES OF ATTORNEYS

For United States of America:

LAUGHLIN E. WATERS,  
United States Attorney,  
MAX F. DEUTZ,  
MARVIN ZINMAN,  
Assistants U. S. Attorney,  
600 Federal Bldg.,  
Los Angeles 12, Calif.

For Adolph G. Sutro:

GRAY, CARY, AMES & FRYE,  
JOHN M. CRANSTON,  
THOMAS C. ACKERMAN, JR.,  
1410 Bank of America Bldg.,  
San Diego 1, Calif.



In the District Court of the United States, in and  
for the Southern District of California, South-  
ern Division

No. 1183

ADOLPH G. SUTRO,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant.

COMPLAINT FOR MONEY DAMAGES UNDER  
FEDERAL TORT CLAIMS ACT

To the Honorable Judges of the District Court of  
the United States, for the Southern District of  
California, Southern Division:

Adolph G. Sutro, plaintiff herein, complains of the  
United States of America, a sovereign power, de-  
fendant, and for a first cause of action alleges:

I.

Plaintiff is, and at all times herein mentioned has  
been, a resident of the City and County of San Fran-  
cisco, State of California; the real property herein-  
after mentioned is located within the County of San  
Diego, State of California, and is within the juris-  
diction of this Honorable Court, and the acts or  
omissions herein complained of occurred within the  
said County of San Diego, State of California, and  
within the jurisdiction of this Honorable Court; the  
ground upon which the jurisdiction of this Court

depends [2\*] is that this is a suit against the United States of America which arises and is brought by plaintiff under the authority of and pursuant to the provisions of the Act of Congress approved June 25, 1948, establishing a Judiciary and Judicial Procedure Code of the United States, 62 Stat. 869 ff., U.S. Code Title 28, Public Law 773, Chapter 646, and particularly Sections 2671 to 2680 of said Act, (which Sections are sometimes referred to as the Federal Tort Claims Act) as amended, as herein-after more fully appears.

## II.

Plaintiff is the owner and entitled to the possession of that certain real property located in the County of San Diego, State of California, more particularly described as follows:

### Parcel 1:

Lots 1, 2, and 3 in Section 28; and Lot 7 and the Northwest Quarter of the Northeast Quarter of Section 33, Township 10 South, Range 4 West, San Bernardino Meridian, in the County of San Diego, State of California, according to United States Government Survey thereof indicated on the Plat of said Township, approved by the Surveyor General on April 5, 1881.

Also all those portions of Lots 1 and 2, in said Section 33, Township 10 South, Range 4 West, San Bernardino Meridian, in the County of San Diego, State of California, according to said Plat approved April 5, 1881, lying above and to the North and

\*Page numbering appearing at foot of page of original Certified Transcript of Record.

East of the meander lines of Pond in said Section 33, as said meander lines are shown on said Plat and as same are more particularly described in the Surveyor's notes accompanying the same, Excepting and Reserving therefrom that portion of Lot 1, Section 33, Township 10 South, Range 4 West, San Bernardino Meridian, conveyed by M. M. Crookshank and Margaret A. Crookshank to John Johnston, Jr., [3] and Dell Hale Johnston by deed dated November 6, 1913, and recorded in Book 645, page 45 of Deeds, and described in said deed as follows:

Beginning at the meander corner No. 20 of that certain Pond in said Section 33, as said pond was surveyed by James Pascoe for the United States Government, said meander corner being now marked by a  $\frac{3}{4}$  inch iron pipe; thence running North  $84^{\circ}11'$  East 759.6 feet to the Easterly line of said Lot 1 in Section 33, Township 10 South, Range 4 West, San Bernardino Meridian; thence South  $0^{\circ}8'$  East along said line 636 feet to the Southeast corner of said Lot 1; thence North  $88^{\circ}28'$  West along the Southerly side of said Lot 1; a distance of 484 feet to an intersection with the meanders of said Pond; thence following the meanders of said Pond North  $30^{\circ}$  East 29.5 feet to meander Corner No. 21; thence North  $29^{\circ}0'$  West 594 feet to the point of beginning.

Also that portion of Lot 3 in Section 33, Township 10 South, Range 4 West, San Bernardino Meridian, in the County of San Diego, State of California, according to United States Government Survey approved April 5, 1881, described as follows:

Beginning at a point of intersection of the West

line of said Lot 3 with the Southeasterly line of the Rancho Santa Margarita Las Flores; thence Southeasterly in a direct line to meander corner No. 16 of that certain "Pond" of unnavigable Lake in said Section 33, as said Pond was surveyed by James Pascoe for the United States Government; thence Southeasterly along the meander line of said Pond to an intersection with the line between Lots 3 and 2 of said Section 33; thence North along said boundary line to the Northeast corner of said Lot 3; thence West along the North line of said Lot 3 to an intersection with the Southeasterly [4] line of said Rancho Santa Margarita Y. Las Flores; thence Southwesterly along said boundary line to the point of beginning.

Excepting therefrom those portions of said Lot 3 included in the deed from Angel Mesa and Flora Mesa, his wife, to John Johnston, Jr., recorded in Book 522, page 319 of Deeds, records of San Diego County, and described therein as "all land in said Lot 3, Section 33, which underlies that portion of said pond or unnavigable Lake in said Lot 3, in said Section 33, to the center line of said Pond or unnavigable lake or which is any time covered or submerged by the waters of that portion of said pond or unnavigable lake in said Lot 3 in said Section 33" and also excepting a strip of land 15 feet wide outside of, parallel with and adjacent to and within 15 feet from said meander line in said Lot 3.

Parcel 2:

That portion of Lot 3, Section 33, Township 10

South, Range 4 West, San Bernardino Meridian, in the County of San Diego, State of California, according to United States Government Survey approved April 5, 1881, described as follows:

Commencing at a point on boundary line between Lot 2 in Section 32, Township 10 South, Range 4 West, San Bernardino Meridian, and Lot 3 in Section 33, Township 10 South, Range 4 West, San Bernardino Meridian, 17.89 feet North of the point where that certain meander line of that certain pond or unnavigable lake in Sections 32 and 33, Township 10 South, Range 4 West, and Section 5, Township 11 South, Range 4 West, (which meander line is particularly set out in a Patent from the State of California to John Johnston, Jr., and recorded in Book 7, [5] page 494, of Patents, in the Office of the County Recorder of San Diego County) intersects said boundary line between said Lot 2 and said Lot 3; thence running South  $57^{\circ}$  East to a point North  $14^{\circ}37\frac{1}{2}'$  East 15.81 feet from the Southeasterly end of that certain line or course which forms a part of said meander line and being that portion of said meander line which intersects the said boundary line between said Lot 2 and said Lot 3 (which said course and distance of said portion of said meander line is as follows, to wit: South  $57^{\circ}$  East 5.48 chains; thence running North  $86\frac{1}{4}^{\circ}$  East 220.56 feet; thence running North  $46\frac{1}{4}^{\circ}$  East 439.66 feet; thence running North  $50^{\circ}$  West 665.15 feet; thence running North  $61\frac{1}{2}^{\circ}$  East 772 feet to an intersection with a line drawn from meander corner No. 16, of that certain "Pond" in said Section 33, as said Pond was

surveyed by James Pascoe for the United States Government, to the point of intersection of the West line of said Lot 3 with the Southeasterly line of the Rancho Santa Margarita Y Las Flores; thence Northwesterly to said point of intersection of the West line of Lot 3 with the Southeasterly line of the Rancho Santa Margarita Y Las Flores; thence South along the West line of said Lot 3 to the point of beginning.

Except therefrom, one-half interest in all oil rights as reserved in a Deed from Lyle Smith to Charles Goss and Lizzie Goss, dated April 17, 1920.

Plaintiff has owned Parcel 1 above described since January 17, 1946, and has owned Parcel 2 above-described since Feburary 23, 1946.

### III.

Said land above described is rich, productive farm land, well suited for the growing of vegetables, including specifically but [6] not limited to celery, peppers, tomatoes and strawberries, and portions thereof had been used for growing said crops for a long time prior to plaintiff's purchase thereof, as hereinabove set forth; said property is bounded upon the north by that certain property owned by the defendant upon which property the defendant has established, and has at all times herein mentioned, maintained a training center known as "Camp Joseph H. Pendleton," which training center is hereinafter referred to as Camp Pendleton.

### IV.

A natural water course, sometimes known as Pil-

grim Creek, flows in the general direction from north to south through Camp Pendleton and from said camp to the said property owned by plaintiff and hereinabove described; said Pilgrim Creek then flows through plaintiff's property from its northerly boundary to its southerly boundary, completely bisecting said property; and except for, and until, the acts of the defendant hereinafter mentioned, the water of said Pilgrim Creek was of a clear and wholesome quality and was suitable for use for domestic and farm purposes, and was used to irrigate vegetables grown upon the said property hereinabove described, and particularly celery, green peppers, strawberries and tomatoes, which vegetables were of great value;

A well is also located upon said property of plaintiff, and, except for, and until, the acts of the defendant hereinafter mentioned, the water from said well was of a clear and wholesome quality and was suitable for domestic purposes, and was used as a source of domestic water for the occupants of said property.

## V.

For more than five (5) years last past, and continuing up to the present time, the defendant has maintained and housed, and now maintains and houses, on its said property known as Camp Pendleton, many thousand men, the exact number varying from time to time, and being unknown to this plaintiff, but said number always being in [7] excess of several thousand; said defendant has for the last five (5) years wrongfully and negligently failed to

provide proper sewage facilities for said Camp Pendleton, and has continuously, during said five (5) years, wrongfully and negligently emptied and discharged large quantities of sewage, polluted with bacteria and other poisonous decaying matters, into said Pilgrim Creek, where said creek runs through the lands of the said defendant; the amount of polluted sewage discharged by defendant into said Pilgrim Creek has been so great that the entire flow of said creek has become polluted and has remained in such condition when it enters and while it runs through the lands of plaintiff above mentioned.

## VI.

Plaintiff has suffered, and still suffers, a special and peculiar injury resulting from said wrongful acts of the defendant in that plaintiff is now, and has been during all of the time plaintiff has owned said land, deprived of the use of the waters of said creek for farm and domestic purposes; pollution by the defendant of the said Pilgrim Creek became so extensive that the Health Department of the County of San Diego ordered that no water from said creek be used on the above-described lands for irrigation of edible vegetables, and that all equipment formerly used for pumping water from said creek and distributing the same upon crops growing on said lands be completely dismantled and torn down; during the time plaintiff has owned said property he has not been able to use said water for growing celery, peppers, tomatoes, strawberries and other crops formerly grown upon said lands, and during said time

said polluted water from said creek has infiltrated into plaintiff's well above mentioned and has polluted the waters therein and rendered them unfit for use.

## VII.

As a direct and proximate result of the actions of the defendant, plaintiff has sustained damages for loss of crops for the year [8] 1946, in the sum of \$46,000.00, for loss of crops for the year 1947; in the sum of \$53,000.00, for loss of crops for the year 1948; in the sum of \$41,000.00, for loss of crops for the year 1949; in the sum of \$39,000.00, for the loss of crops for the year 1950, to the date of filing this Complaint in the sum of \$11,000.00, and for loss occasioned by pollution of his well, including the sums required to restore said well to its original condition after the source of said pollution has been removed, the sum of \$10,000.00; the total damages caused to plaintiff's property to and including the date of the filing of this Complaint as a result of the actions of the said defendant is the sum of \$190,000.00.

## VIII.

The nuisance above mentioned is continuous and constantly recurring, and is causing plaintiff further damage in the sum of \$125.00 for each and every day it is maintained.

### Second Cause of Action

For a further, separate and second cause of action against the defendant, plaintiff alleges:

## I.

Plaintiff hereby refers to the allegations of Para-

graphs I and II of his First Cause of Action herein, and by this reference incorporates each and every allegation in said paragraphs contained as a part of this Cause of Action the same as though herein set forth in full. [9]

## II.

Said property of plaintiff above described is bounded upon the north by that certain property owned by the defendant, upon which property the defendant has established, and has at all times herein mentioned maintained, a training center known as Camp Joseph H. Pendleton, which training center is hereinafter referred to as Camp Pendleton; a natural water course sometimes known as Pilgrim Creek flows in the general direction from north to south through Camp Pendleton, and from said Camp to the property owned by plaintiff and hereinabove described; said Pilgrim Creek then flows through plaintiff's property from its northerly boundary to its southerly boundary completely bisecting said property, and immediately below plaintiff's property passes into a natural lake known as Foss Lake; from said Foss Lake the waters of Pilgrim Creek flow into the San Luis Rey River, a natural water course which leads to the Pacific Ocean; the portion of the channel of said Pilgrim Creek between said Foss Lake and said San Luis Rey River was of limited capacity, and prior to the year 1945, had become clogged and overgrown with willows and tules.

## III.

For more than five (5) years last past, and con-

tinuing up to the present time, the defendant has maintained and housed, and now maintains and houses, on its said property known as Camp Pendleton, many thousand men, the exact number varying from time to time and being unknown to this defendant but said number always being in excess of several thousand; said defendant has for the last five (5) years emptied and discharged large quantities of sewage into said Pilgrim Creek in excess of the carrying capacity of that portion of the channel leading from Foss Lake to the San Luis Rey River, without dredging said channel or removing from it the willows, tules, underbrush and other debris which prevented the rapid flow of water through said portion of the channel of said Pilgrim [10] Creek; the great increase in the volume of water in Pilgrim Creek so occasioned by the acts of defendant caused said creek to wash and erode its banks above plaintiff's land and caused said water to become laden with silt and dirt; the defendant has also, during the last five (5) years, carried on vast construction works on its said property in such a negligent fashion as to cause large quantities of dirt, mud, silt and debris to be washed into the said Pilgrim Creek in addition to the quantities of dirt and silt eroded by the said increased flow; the fall of Pilgrim Creek through plaintiff's lands is less rapid than it is through the defendant's lands and said silt and dirt so carried from defendant's lands has been deposited on plaintiff's lands; as a direct and proximate result of all of the actions of the defendant above described the level of water in Foss Lake was greatly increased

and a small portion of plaintiff's land was flooded, and the water table under an additional portion of plaintiff's land was raised, and said land became marshy and untillable.

#### IV.

The defendant wrongfully and negligently failed either to reduce its said flow of sewage into said Pilgrim Creek or to enlarge the channel of Pilgrim Creek below Foss Lake or to cease its negligent construction activities for a period of many months; during said time large quantities of alkali and salts were deposited in and on plaintiff's land by said excess waters, rendering said lands unsuitable for agriculture; it will be necessary for plaintiff to expend large sums of money to reclaim said lands and to render them tillable and fit for cultivation, to plaintiff's damage in the sum of \$8,750.00.

Wherefore, plaintiff prays for judgment against the defendant as follows:

Upon his first cause of action, in the sum of \$190,-000.00, together with the further and additional sum of \$125.00 for each [11] and every day between the filing of this Complaint and the entry of said judgment.

Upon his second cause of action, in the sum of \$8,750.00;

For a reasonable attorneys' fee to be paid out of the recovery herein to plaintiff's attorneys;

For plaintiff's costs of suit herein incurred; and  
For such other and further relief as may seem  
proper in the premises.

GRAY, CARY, AMES &  
DRISCOLL,

/s/ JOHN M. CRANSTON,  
Attorneys for Plaintiffs.

[Endorsed]: Filed April 19, 1950. [12]

---

[Title of District Court and Cause.]

### ANSWER

Comes Now the defendant, United States of America, and for its Answer to the Plaintiff's complaint on file herein, admits, denies and alleges as follows:

#### First Cause of Action

##### I.

Answering Paragraph I of plaintiff's First Cause of Action, defendant admits that the real property mentioned therein is located within the County of San Diego, State of California; further answering said paragraph defendant alleges that it does not have sufficient information upon which to form a belief as to the truth of the other allegations set forth therein and on said ground denies each and every other allegation contained therein; further answering said paragraph, defendant specifically denies that there is any jurisdiction in this Court of

the within action under the provisions of the Federal Tort Claims Act, 28 U.S.C. 1346 and 28 U.S.C. 2671 to 2680, inclusive. [14]

## II.

Answering Paragraph II of plaintiff's First Cause of Action, defendant alleges that it does not have sufficient information upon which to form a belief as to the truth of the allegations set forth therein and on said ground denies each and every allegation contained therein.

## III.

Answering Paragraph III of plaintiff's First Cause of Action, defendant admits that the real property of the plaintiff is bounded on the north by Camp Joseph H. Pendleton; further answering said paragraph, defendant alleges that it does not have sufficient information upon which to form a belief as to the truth of the other allegations therein and on said ground denies each and every other allegation therein contained.

## IV.

Answering Paragraph IV of plaintiff's First Cause of Action, defendant admits that Pilgrim Creek flows in the general direction from north to south through Camp Pendleton and from said camp to the property owned by the plaintiff, and that said Pilgrim Creek then flows through plaintiff's property from its northerly boundary to its southerly boundary, completely bi-secting said property; further answering said paragraph, defendant alleges that it does not have sufficient information upon

which to form a belief as to the truth of the other allegations therein, and on said ground denies each and every other allegation therein contained.

## V.

Answering Paragraph V of Plaintiff's First Cause of Action, defendant admits that it maintains and houses large numbers of men at Camp Pendleton, and that their number varies from time to time; further answering said paragraph, defendant both generally and specifically denies each and every other allegation contained therein.

## VI.

Answering Paragraph VI of the plaintiff's First Cause of Action, [15] defendant alleges that it does not have sufficient information upon which to form a belief as to the truth of the allegations therein and on said ground denies each and every allegation contained therein; further answering said paragraph, defendant alleges that it is informed and believes that the lands of the plaintiff, the subject matter of this action, have at all times been suitable for the growing of edible farm crops of one type or another, so that the plaintiff at no time has been unable to grow farm crops of substantial value; further answering said paragraph, defendant alleges that the condition of the plaintiff's land is essentially the same as when acquired by him and that the plaintiff has suffered no damage.

## VII.

Answering Paragraph VII of plaintiff's First

Cause of Action, defendant alleges that it does not have sufficient information upon which to form a belief as to the truth of the allegations therein and on said ground denies each and every allegation therein contained; further answering said paragraph, defendant both generally and specifically, denies that the plaintiff has suffered crop loss of \$46,000 for the year 1946, \$53,000 for the year 1947, \$41,000 for the year 1948, \$39,000 for the year 1949, \$11,000 for all or any portion on the year of 1950, and for damage to his well in the sum of \$10,000, or a total damage of \$190,000, or that the plaintiff has been damaged in any other sum whatsoever.

## VIII.

Answering Paragraph VIII of the plaintiff's First Cause of Action, defendant both generally and specifically denies each and every allegation therein contained.

### Second Cause of Action

#### I.

Answering Paragraph I of plaintiff's Second Cause of Action, defendant admits, denies and alleges to the same extent and to the same effect as the defendant admitted, denied, and alleged in answer to Paragraphs I and II of plaintiff's First Cause of Action, which the plaintiff has incorporated in Paragraph I of his Second Cause of Action by reference. [16]

#### II.

Answering Paragraph II of plaintiff's Second

Cause of Action, defendant admits that it maintains a training center on certain of its property known as Camp Joseph H. Pendleton, and that that property bounds the property of the plaintiff on the north; further answering said paragraph defendant admits that a natural water course sometimes known as Pilgrim Creek flows in the general direction from north to south through Camp Pendleton, and from said Camp to the property owned by plaintiff, that said Pilgrim Creek then flows through plaintiff's property from its northerly boundary to its southerly boundary completely bi-secting said property, and immediately below plaintiff's property passes into a natural lake known as Foss Lake, and from said Foss Lake the waters of Pilgrim Creek flow into the San Luis Rey River, a natural water course which leads to the Pacific Ocean; further answering said paragraph defendant alleges that it does not have sufficient information upon which to form a belief as to the truth of the other allegations contained therein and on said ground both generally and specifically denies each and every other allegation contained therein.

### III.

Answering Paragraph III of Plaintiff's Second Cause of Action, defendant admits that it maintains and houses large numbers of men at Camp Pendleton, and that their number varies from time to time; further answering said paragraph defendant alleges that it does not have sufficient information upon which to form a belief as to the truth of the other allegations contained therein and on said ground

system to satisfy and protect adjoining land owners, but the plaintiff has obstructed and blocked such attempts.

For a Seventh, Further and Distinct Affirmative Defense, This Answering Defendant AllegeS:

That the damage to the plaintiff, if any, has been caused by the actions of another adjacent land-owner, or landowners, in preventing the defendant from installing additions to its sewage disposal system to carry away surplus waters from Foss Lake, and has not been caused in whole or in part by any negligent or wrongful act of any employee, servant or agent of the defendant acting within the scope of his employment.

ERNEST A. TOLIN,  
United States Attorney;

CLYDE C. DOWNING,  
Assistant U. S. Attorney,  
Chief, Civil Division;

MAX F. DEUTZ,  
Assistant U. S. Attorney;

/s/ MAX F. DEUTZ,  
Attorneys for Defendant.

Affidavit of service by mail attached.

[Endorsed]: Filed November 1, 1950. [19]

[Title of District Court and Cause.]

SUPPLEMENTAL COMPLAINT FOR DAMAGES UNDER FEDERAL TORT CLAIMS ACT

To the Honorable Judges of the District Court of the United States, for the Southern District of California, Southern Division:

Adolph G. Sutro, plaintiff, bring this, his Supplemental Complaint herein, leave having been granted by this Court so to do, against the United States of America, a sovereign power, and alleges that since the filing of the original Complaint herein the following material facts have occurred, viz.:

I.

On October 9, 1950, plaintiff began digging a first series of seven test holes upon the property referred to and described in Paragraph II of plaintiff's complaint herein; on November 20, 1950, plaintiff began digging a second series of nine test holes; these test holes confirmed the existence of a [21] very large basin of water under plaintiff's lands above-mentioned, and plaintiff accordingly dug a new well upon his said property, said well being in addition to the well referred to in plaintiff's Complaint on file herein; said well was completed and tested by December 16, 1950.

II.

The flow of said well and the supply of water in said underground basin is sufficient to irrigate each

and every acre of plaintiff's entire property referred to in plaintiff's Complaint herein, even during periods of extreme drouth.

### III.

At the time plaintiff filed his Complaint herein, although plaintiff was informed and believed that the entire property referred to in Paragraph II of his Complaint had in the past been irrigated with a supply of water from Pilgrim Creek and from the original well referred to in said Complaint, plaintiff did not know of his own knowledge that this supply of water was sufficient to irrigate all his said land, and, therefore, in computing the damages caused plaintiff by defendant's actions, plaintiff considered only the damage caused by the pollution of a supply of water sufficient to irrigate fifty (50) acres of land.

### IV.

The water in said underground basin and in said new well referred to in Paragraph I hereinabove have been, and are, polluted by the infiltration of the polluted waters from Pilgrim Creek referred to in plaintiff's Complaint herein; said polluted creek waters have so infiltrated into said underground basin that the entire basin is polluted and the water in plaintiff's new well above mentioned is polluted and unfit for use for domestic purposes or for growing edible vegetables.

### V.

As a direct and proximate result of the actions of the [22] defendant, plaintiff has sustained, in addi-

tion to the damages alleged in plaintiff's Complaint on file herein, and since the filing of said Complaint, for loss of crops for the months of April to December, inclusive, in the year 1950, the sum of \$35,000.00; for the loss of crops for the year 1951, up to the date of the filing of this Supplemental Complaint the sum of \$36,000.00; and for loss occasioned by the new well referred to in this Supplemental Complaint, including sums required to purify the underground basin of water tapped by the said well, the sum of \$15,000.00.

## VI.

The nuisance referred to in plaintiff's Complaint on file herein has continued at all times since the filing of said Complaint, and still continues to pollute the large underground supply of water hereinabove referred to; said nuisance is causing plaintiff further damage in the sum of \$375.00 for each and every day it is maintained.

Wherefore, plaintiff prays judgment against the defendant as follows.

1. Upon his first cause of action as supplemented by this Supplemental Complaint, in the total sum of \$276,000.00, together with the further and additional sum of \$375.00 for each and every day between the filing of this Supplemental Complaint and the entry of said judgment;

2. Upon his second cause of action in the sum of \$8,750.00;

3. For a reasonable attorneys' fees to be paid out of the recovery herein to plaintiff's attorneys;

4. For plaintiff's costs of suit herein incurred;  
and

5. For such other and further relief as may seem  
proper in the premises.

GRAY, CARY AMES &  
DRISCOLL,

/s/ JOHN M. CRANSTON,  
Attorneys for Plaintiff.

Duly verified.

[Endorsed]: Filed April 16, 1951. [23]

---

[Title of District Court and Cause.]

### AMENDED ANSWER

Comes Now the defendant, United States of America, and by leave of the Court this day granted, files this Amended Answer to the Complaint and Supplemental Complaint of the plaintiff Adolph G. Sutro; and for its Answer to the plaintiff's said Complaint on file herein, admits, denies and alleges as follows:

#### First Cause of Action

##### I.

Answering Paragraph I of plaintiff's First Cause of Action, defendant admits that the real property mentioned therein is located within the County of San Diego, State of California; further answering said paragraph defendant alleges that it does not

have sufficient information upon which to form a belief as to the truth of the other allegations set forth therein and on said ground denies each and every other allegation contained therein; further answering said paragraph, defendant specifically denies that there is any jurisdiction [25] in this Court of the within action under the provisions of the Federal Tort Claims Act, 28 U.S.C. 1346 and 28 U.S.C. 2671 to 2680, inclusive.

## II.

Answering Paragraph II of plaintiff's First Cause of Action, defendant alleges that it does not have sufficient information upon which to form a belief as to the truth of the allegations set forth therein and on said ground denies each and every allegation contained therein.

## III.

Answering Paragraph III of plaintiff's First Cause of Action, defendant admits that the real property of the plaintiff is bounded on the north by Camp Joseph H. Pendleton; further answering said paragraph, defendant alleges that it does not have sufficient information upon which to form a belief as to the truth of the other allegations therein and on said ground denies each and every other allegation therein contained.

## IV.

Answering Paragraph IV of plaintiff's First Cause of Action, defendant admits that Pilgrim Creek flows in the general direction from north to

south through Camp Pendleton and from said camp to the property owned by the plaintiff, and that said Pilgrim Creek then flows through plaintiff's property from its northerly boundary to its southerly boundary, completely bi-secting said property; further answering said paragraph, defendant alleges that it does not have sufficient information upon which to form a belief as to the truth of the other allegations therein, and on said ground denies each and every other allegation therein contained.

## V.

Answering Paragraph V of plaintiff's First Cause of Action, defendant admits that it maintains and houses large numbers of men at Camp Pendleton, and that their number varies from time to time; further answering said paragraph, defendant both generally and specifically denies each and every other allegation contained therein. [26]

## VI.

Answering Paragraph VI of the plaintiff's First Cause of Action, defendant alleges that it does not have sufficient information upon which to form a belief as to the truth of the allegations therein and on said ground denies each and every allegation contained therein; further answering said paragraph, defendant alleges that it is informed and believes that the lands of the plaintiff, the subject matter of this action, have at all times been suitable for the growing of edible farm crops of one type or another, so that the plaintiff at no time has been unable to

grow farm crops of substantial value; further answering said paragraph, defendant alleges that the condition of the plaintiff's land is essentially the same as when acquired by him and that the plaintiff has suffered no damage.

## VII.

Answering Paragraph VII of plaintiff's First Cause of Action, defendant alleges that it does not have sufficient information upon which to form a belief as to the truth of the allegations therein and on said ground denies each and every allegation therein contained; further answering said paragraph, defendant both generally and specifically denies that the plaintiff has suffered crop loss of \$46,000 for the year 1946, \$53,000 for the year 1947, \$41,000 for the year 1948, \$39,000 for the year 1949, \$11,000 for all or any portion of the year of 1950, and for damage to his well in the sum of \$10,000 or a total damage of \$190,000, or that the plaintiff has been damaged in any other sum whatsoever.

## VIII.

Answering Paragraph VIII of the plaintiff's First Cause of Action, defendant both generally and specifically denies each and every allegation therein contained.

### Second Cause of Action

#### I.

Answering Paragraph I of plaintiff's Second Cause of Action, defendant admits, denies and al-

leges to the same extent and to the same effect as the defendant admitted, denied, and alleged in answer to Paragraphs I and II of [27] plaintiff's First Cause of Action, which the plaintiff has incorporated in Paragraph I of his Second Cause of Action by reference.

## II.

Answering Paragraph II of plaintiff's Second Cause of Action, defendant admits that it maintains a training center on certain of its property known as Camp Joseph H. Pendleton, and that that property bounds the property of the plaintiff on the north; further answering said paragraph defendant admits that a natural water course sometimes known as Pilgrim Creek flows in the general direction from north to south through Camp Pendleton, and from said Camp to the property owned by plaintiff, that said Pilgrim Creek then flows through plaintiff's property from its northerly boundary to its southerly boundary completely bi-secting said property, and immediately below plaintiff's property passes into a natural lake known as Foss Lake, and from said Foss Lake the waters of Pilgrim Creek flow into the San Luis Rey River, a natural water course which leads to the Pacific Ocean; further answering said paragraph defendant alleges that it does not have sufficient information upon which to form a belief as to the truth of the other allegations contained therein and on said ground both generally and specifically denies each and every other allegation contained therein.

## III.

Answering Paragraph III of plaintiff's Second Cause of Action, defendant admits that it maintains and houses large numbers of men at Camp Pendleton, and that their number varies from time to time; further answering said paragraph defendant alleges that it does not have sufficient information upon which to form a belief as to the truth of the other allegations contained therein and on said ground both generally and specifically denies each and every other allegation contained therein except that the defendant admits that from time to time certain amounts of construction work are carried on at Camp Pendleton; further answering said paragraph defendant alleges that it maintains modern sewage treatment plants in which all sewage is adequately treated before any of the affluent is discharged; further answering said paragraph defendant alleges that it is under no duty to remove underbrush, willows, tules, and other debris in the channel of [28] Pilgrim Creek between Foss Lake and the San Luis Rey River on land not owned by the defendant and removed by some distance from the lands of the defendant at Camp Pendleton.

## IV.

Answering Paragraph IV of plaintiff's Second Cause of Action, defendant both generally and specifically denies each and every allegation contained therein.

Supplemental Complaint

For its Answer to plaintiff's Supplemental Com-

plaint on file herein, the defendant admits, denies and alleges as follows:

### I-VI.

Answering Paragraphs I through VI, inclusive, of plaintiff's Supplemental Complaint, the defendant alleges that it is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in said paragraphs, and on that ground denies each and every allegation contained therein.

For a Second, Further and Distinct Affirmative Defense, This Answering Defendant Alleges:

That this Court has no jurisdiction of the subject matter of this action, for the reason that the allegations of the complaint sound in contract and the amount in controversy exceeds the jurisdictional limitations of the Tucker Act, 28 U.S.C. 1346.

For a Third, Further and Distinct Affirmative Defense, This Answering Defendant Alleges:

That this Court has no jurisdiction over the subject matter of this action for the reason that it falls within the exceptions to the Federal Tort Claims Act set forth in Section 2680(a) of Title 28, United States Code.

For a Fourth, Further and Distinct Affirmative Defense, This Answering Defendant Alleges: [29]

That the plaintiff's lands were entirely suitable for the growing of other edible farm crops than those set forth in the complaint, and that the plain-

tiff has failed to plant and grow such crops in mitigation of the alleged loss caused by the defendant.

For a Fifth, Further and Distinct Affirmative Defense, This Answering Defendant Alleges:

That the conditions of the plaintiff's lands of which he complains as having been caused by acts of the defendant, existed prior to, and at the time of, the purchase of said land by the plaintiff, and that the plaintiff had full knowledge thereof, and has suffered no damage thereby; that if said lands are, in fact, unfit to grow the crops enumerated and set forth in the plaintiff's complaint, this condition existed prior to, and at the time of, the purchase of said lands by the plaintiff.

For a Sixth, Further and Distinct Affirmative Defense, This Answering Defendant Alleges:

That the defendant has attempted, ever since the plaintiff acquired the real property involved in this action, to establish additions to its sewage disposal system to satisfy and protect adjoining land owners, but the plaintiff has obstructed and blocked such attempts.

For a Seventh, Further and Distinct Affirmative Defense, This Answering Defendant Alleges:

That the damage to the plaintiff, if any, has been caused by the actions of another adjacent landowner, or landowners, in preventing the defendant from installing additions to its sewage disposal system to carry away surplus waters from Foss Lake, and has

not been caused in whole or in part by any negligent or wrongful act of any employee, servant or agent of the defendant acting within the scope of his employment. [30]

For the Eighth, Further and Distinct Affirmative Defense, This Answering Defendant Alleges:

That in or about the year 1943, and before the plaintiff acquired any interest whatever in the riparian real property described in paragraph II of the first cause of action in plaintiff's Complaint, the defendant, by right of eminent domain under Chs. 43, 199 and 549 of the Public Acts of the 77th Congress, 2d Session (56 Stat. (U.S.) 51, 177, 742, and California Political Code § 34 (Cal. Stats. 1939 Ch. 710), took and acquired for value for public use from the then owners of said real property a permanent right and easement to augment and pollute the waters of Pilgrim Creek by discharging therein at Camp Joseph H. Pendleton the sewage effluents produced by two sewage treatment and disposal plants then constructed and being operated by the defendant at said camp. Such discharge was in 1943, and ever since has been, effected through outfalls, constructed and operated for that purpose by the Secretary of the Navy, connecting the plants with said creek.

Ever since the year 1943, and at all times mentioned in the plaintiff's Complaint as amended, the defendant has continuously, openly, notoriously and adversely used, exercised and enjoyed the right and easement of augmentation and pollution so taken

and acquired, by emptying and discharging the sewage effluents from said two plants into said creek through the outfalls aforesaid. This practice was continuous from 1943 to August 7, 1950, since which latter date the sewage effluent from one of said plants has been diverted for disposal into another watershed and has not entered Pilgrim Creek. The defendant has not emptied nor discharged any sewage into said creek at any time mentioned in the Complaint as amended, other than the sewage effluents from said two plants, and the burden, if any, on the plaintiff's real property caused by such discharge of sewage effluents has not been increased or altered to the detriment of plaintiff's said property during plaintiff's ownership.

At and before he bought said real property in 1946, the plaintiff knew that the defendant had previously taken, acquired and was then using, exercising and enjoying, in the manner above-stated, the right and easement of augmentation [31] and pollution above set forth. Plaintiff bought and has held said property with knowledge at all times of the defendant's said practice and use of said stream.

The augmentation and pollution of the creek waters, well and water basin on plaintiff's said real property, which are charged in the Complaint as amended, if they were caused by the defendant's acts, aforesaid, were the necessary, natural and reasonably-to-be-expected results of the use and enjoyment by the defendant of such right and easement of augmentation and pollution; and all such alleged results, and all the conditions of which the plaintiff

complains in his Complaint as amended, had fully accrued, and existed, at and before the plaintiff acquired said property, and were then known to the plaintiff.

The construction work mentioned in paragraph III of the Second Cause of Action in plaintiff's Complaint was all done and completed by the defendant, or its agents, before the plaintiff acquired said property; and any alleged effects thereof set forth in the Complaint had accrued and existed, as the plaintiff then knew, at and before the time he acquired said property.

All the defendant's actions charged in the complaint, to the extent that such allegations may be true, in whole or in part, were done by the defendant by right of eminent domain and in the performance of public works, and were not tortious as to the plaintiff.

Ever since 1943, and at all times mentioned in the Complaint, the defendant has owned, and has exercised exclusive legislative jurisdiction over, the land and waters embraced within Camp Joseph H. Pendleton. The defendant in 1942-1943, acquired said camp for use, and has at all times since used the same as a fort or area for the training of United States Marine Corps personnel. The use of Pilgrim Creek for sewage disposal was deemed necessary by the Secretary of the Navy in order to facilitate the use of said camp for the above purposes; and this is the public use for which the defendant took, ac-

quired and has since used and enjoyed the right and easement of augmentation and pollution aforesaid.

WALTER S. BINNS,  
United States Attorney;  
CLYDE C. DOWNING and  
JAMES C. R. McCALL,  
Assistants United States  
Attorney;

By /s/ JAMES C. R. McCALL,  
Attorneys for Defendant.

Lodged May 5, 1952.

[Endorsed]: Filed May 9, 1952. [32]

---

[Title of District Court and Cause.]

#### FINDINGS OF FACT AND CONCLUSIONS OF LAW

This action having been tried by the Court without a jury on the issue of liability alone on July 16 and 17, and July 20 to 24, inclusive, 1953, the Court hereby makes the following Findings of Fact and Conclusions of Law (in addition to the facts set forth in the Pre-Trial Order heretofore signed by Judge Jacob Weinberger) upon the issue of liability alone:

##### Findings of Fact

1. Sewage Disposal Plants Nos. 1 and 2 at Camp Joseph H. Pendleton were adequately planned and

constructed, and were capable of producing an effluent of such character that the waters of Pilgrim Creek into which the effluent was discharged could thereafter be used for irrigating all edible crops, including vegetables, garden truck, berries and low-growing fruits.

2. The defendant acting through its agents in charge [33] of and operating the said sewage disposal plants, negligently and wrongfully failed adequately and properly to chlorinate the effluent from said Sewage Disposal Plants Nos. 1 and 2, which effluent was discharged into Pilgrim Creek and thence onto plaintiff's property.

3. The operators of the said sewage disposal plants negligently and wrongfully failed to obey or carry out the mandatory directions contained in the manual issued by the United States Navy with reference to the examination and inspection of the effluent of said sewage disposal plants and of the waters of Pilgrim Creek into which the said effluent was discharged, and when tests of the effluent and of the waters of Pilgrim Creek were made in the years 1949-1951, the number of tests made was inadequate and the information provided by the tests was not acted upon.

4. The operators of said sewage disposal plants negligently and wrongfully failed to obey or carry out the mandatory directions of the Eleventh Naval District with reference to the inspection and testing of the effluent of the sewage disposal plants.

5. The waters of Pilgrim Creek prior to the discharge into said creek of the effluents from defendant's Sewage Disposal Plants Nos. 1 and 2 were pure and wholesome, and were suitable for the irrigation of edible crops, including vegetables, garden truck, berries and low-growing fruits.

6. The foregoing acts of the defendant caused the pollution of Pilgrim Creek and rendered its waters unfit and unsuitable for the irrigation of edible crops, including vegetables, garden truck, berries and low-growing fruits.

7. The pollution of Pilgrim Creek so caused by the acts of the defendant resulted in the pollution of the well which was upon plaintiff's property at the time he bought it, and also the [34] pollution of the new well subsequently dug by plaintiff in the fall of 1950, and rendered the waters of each of said wells unfit and unsuitable for the irrigation of edible crops, including vegetables, garden truck, berries and low-growing fruits.

8. The defendant did negligently and wrongfully augment the flow of Pilgrim Creek until the draining of Foss Lake in the latter part of 1946, or the early part of 1947, and caused the silting of the channel of the said creek as it flows through the property of plaintiff, and caused a deposit of silt upon the property of plaintiff.

9. The plaintiff has never blocked or obstructed, or attempted to block or obstruct, any efforts of the defendant to improve its operations with respect

to the discharge of sewage, but on the contrary has cooperated with the defendant whenever requested by the defendant so to do.

10. Defendant has never exercised, or attempted to exercise, the right of eminent domain, or taken or attempted to take an easement to augment and/or pollute the waters of Pilgrim Creek; the defendant has not compensated, or offered to compensate, the plaintiff for any such easement, and no such easement has ever existed, or now exists.

11. The failure of the operators of the sewage disposal plants adequately and properly to chlorinate the effluent from Sewage Disposal Plants Nos. 1 and 2, and to make the tests and inspections directed by the United States Navy and by the Eleventh Naval District, and the deposit of silt in the channel of the creek and upon plaintiff's land, all as hereinabove set forth, proximately caused damage to plaintiff's property; the nature and extent of the injury have not yet been ascertained, and can be fixed only after the proper measure of damages has been determined by this Court, and after additional evidence as to said damages has been presented at a further trial of this action. [35]

#### Conclusions of Law

I. This Court has jurisdiction of the subject matter of this action.

II. The defendant is not exempted from liability to plaintiff by reason of the provisions, or any of the

provisions, of Section 2680(a) of Title 28 of the U. S. Code.

III. The defendant is liable to plaintiff in damages for the injuries sustained by the plaintiff, as hereafter determined by this Court upon all evidence heretofore and hereafter introduced.

Dated: October 16th, 1953.

/s/ PAUL J. McCORMICK,  
U. S. District Judge.

[Endorsed]: Filed October 19, 1953. [36]

---

[Title of District Court and Cause.]

SECOND SUPPLEMENTAL COMPLAINT FOR  
DAMAGES UNDER FEDERAL TORT  
CLAIMS ACT

To the Honorable Judges of the District Court of the United States, for the Southern District of California, Southern Division:

Adolph G. Sutro, plaintiff, brings this his Second Supplemental Complaint herein, leave having been granted by this Court so to do, against the United States of America, a sovereign power, and alleges that since the filing of the original Complaint and the Supplemental Complaint herein, the following material facts have occurred, viz.:

I.

The defendant continued the course of conduct referred to in the first cause of action in plaintiff's Complaint on file herein, and continued to pollute

the waters of Pilgrim Creek and the wells upon plaintiff's property by the discharge [37] into said creek of large quantities of sewage polluted with bacteria and other poisonous decaying matters, to and including the 21st day of July, 1952; thereafter, although plaintiff frequently requested defendant to give plaintiff some assurance that defendant would not again pollute said creek, defendant wholly failed and refused to give plaintiff any such assurance but on the contrary defendant repeatedly asserted the right to continue to discharge said sewage into said creek and to pollute said creek and the wells upon plaintiff's property.

## II.

As a direct and proximate result of the actions of the defendant, plaintiff has sustained damages in addition to the damages alleged in plaintiff's Complaint and Supplemental Complaint on file herein, and since the filing of said Complaint and Supplemental Complaint, in the sum of \$150,000.00.

Wherefore, plaintiff prays judgment against the defendant as prayed for in his Complaint and Supplemental Complaint on file herein, together with the additional sum of \$150,000.00, and such other and further relief as may seem proper in the premises.

GRAY, CARY, AMES & FRYE,  
/s/ JOHN M. CRANSTON,  
Attorneys for Plaintiff.

Duly verified.

[Endorsed]: Filed March 4, 1954. [38]

[Title of District Court and Cause.]

## ANSWER TO SECOND SUPPLEMENTAL COMPLAINT

Comes now the defendant, United States of America, and for its answer to the plaintiff's Second Supplemental Complaint admits, denies and alleges as follows:

### I.

Answering paragraph I of the Second Supplemental Complaint defendant denies generally and specifically each and every allegation contained therein.

### II.

Answering paragraph II of the Second Supplemental Complaint defendant denies generally and specifically each and every allegation contained therein; further answering said paragraph II, defendant denies that plaintiff has sustained damages in the sum of \$150,000, or any other sum, or at all.

### III.

Further answering the Second Supplemental Complaint, defendant refers to and incorporates by reference herein its Amended Answer to the Complaint and [40] Supplemental Complaint filed in this cause on May 9, 1952.

LAUGHLIN E. WATERS,  
United States Attorney;

MAX F. DEUTZ,

Assistant U. S. Attorney,

Chief, Civil Division;

/s/ LOUIS LEE ABBOTT,

Assistaant U. S. Attorney,

Attorneys for Defendant.

Affidavit of Service by Mail attached.

[Endorsed]: Filed March 15, 1954. [41]

---

[Title of District Court and Cause.]

CONCLUSIONS OF THE COURT, AWARD,  
AND ORDER FOR JUDGMENT AND AT-  
TORNEY'S FEES

A review and study of the oral evidence contained in the 710 pages of the reporter's transcript in conjunction with many of the exhibits introduced in the trial of the novel and intricate issue of damages herein, and the 112 pages of briefs submitted by counsel, in my opinion, establishes plaintiff's right to a total money judgment of \$31,921.36 against the defendant United States of America, with costs of suit herein incurred pursuant to law.

The award of said damages herein is made under the established liability of the defendant pursuant to the Federal Tort Claims Act as adjudged by this court in the initial trial on the issue of liability alone in San Diego, California, and as such liability has been duly entered in the findings of

fact and conclusions of law on file herein, said money judgment is ordered accordingly.

The attorneys for the plaintiff will appropriately and within ten days from notice hereof prepare, serve and present for signature said judgment under the rules of this court.

It is further ordered that because of the necessarily extended and manifold legal services of the plaintiff's [43] attorneys, said attorneys be and they are hereby allowed twenty per cent of said judgment, to wit, \$6384.27, to be paid to said attorneys out of the said judgment of \$31,921.36, as provided in Title 28 U.S.C. 2678.

The items included in the award are as follows:

Loss of rental value on 56.55 acres at \$60.00 per acre for a six-year period, 1946 to 1952.....	\$20,358.00
Loss of rental value on 25.80 acres at \$40.00 per acre for a six-year period, 1946 to 1952.....	6,192.00
Loss of rental value on 18 acres at \$10.00 per acre for a six-year period, 1946 to 1952 .....	1,080.00
<hr/>	
Total .....	\$27,630.00
<hr/>	
Estimated crop receipts during six-year period, 1946 to 1952.....	\$ 8,711.64
<hr/>	
Total Loss of Rental.....	\$18,918.36

## Increased Building Costs:

Repair Shop .....	\$ 5,869.00
Implement Shed .....	1,540.00
Help House .....	3,036.00
Storage Shed .....	2,558.00

---

Total established allowable increased  
building costs ..... \$13,003.00

All other damages claimed by the plaintiff in his previous pleadings, including the supplemental complaint filed during the trial, are under the clear weight of the evidence found to fall in categories of uncertainty, remoteness, infeasibleness, unnecessary, and are respectively disallowed in this action.

Dated June 28, 1954.

/s/ PAUL J. McCORMICK,  
United States District Judge.

[Endorsed]: Filed June 28, 1954. [44]

United States District Court, Southern District  
of California, Southern Division

No. 1183-SD Civil

ADOLPH G. SUTRO,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant.

JUDGMENT AWARDING DAMAGES AND  
ALLOWING ATTORNEYS' FEES

This case came on for trial before the Court without a jury on the issue of liability alone on July 16th and 17th, and July 20th and 24th, inclusive, 1953, and on the issue of damages on September 29, 1953; January 29, 1954; March 1st to 5th, inclusive, and March 8, 1954; and the issues having been tried, pursuant to the findings and conclusions of the Court contained in the Findings of Fact and Conclusions of Law, and the Conclusions of the Court, Award, and Order for Judgment and Attorneys' Fees previously signed and entered herein,

It Is Hereby Ordered, Adjudged and Decreed: That plaintiff Adolph G. Sutro do have and recover from the defendant United States of America, the sum of \$31,921.36, together with his costs of suit herein incurred, amounting to ~~\$253.20~~ (Retaxed \$430.70.)

It Is Further Ordered: That John M. Cranston, and Messrs. [45] Gray, Cary, Ames & Frye, attorneys for plaintiff, be, and they hereby are, allowed twenty per cent of the said judgment, to wit: the sum of \$6,384.27, to be paid to said attorneys out of said judgment for \$31,921.36; said sum of \$6,384.27 is to be charged pro rata against the items included in the foregoing judgment for \$31,921.36 as particularly set forth in the said Conclusions of the Court, Award and Order for Judgment and Attorneys' Fees hereinabove referred to.

Dated: July 29th, 1954.

/s/ PAUL J. McCORMICK,  
Judge.

Approved as to form this 29th day of July, 1954.

LAUGHLIN E. WATERS,  
United States Attorney;

MAX F. DEUTZ,  
Assistant U. S. Attorney,  
Chief, Civil Division;

LOUIS LEE ABBOTT,  
Assistant U. S. Attorney;

By /s/ LOUIS LEE ABBOTT,  
Attorneys for Defendant.

Docketed and entered July 29, 1954. [46]  
[Endorsed]: Filed July 29, 1954.

[Title of District Court and Cause.]

### NOTICE OF APPEAL

Notice Is Hereby Given That the United States of America, the defendant in the above-entitled action, hereby appeals to the United States Court of Appeals for the Ninth Circuit from the Conclusions of the Court, Award and Order for Judgment and Attorneys' Fees entered in this action on June 28, 1954.

LAUGHLIN E. WATERS,

United States Attorney;

MAX F. DEUTZ,

Assistant U. S. Attorney,

Chief, Civil Division;

MARVIN ZINMAN,

Assistant United States

Attorney;

/s/ MARVIN ZINMAN,

Attorneys for Defendant.

Affidavit of Service by Mail attached.

[Endorsed]: Filed August 25, 1954. [47]

---

[Title of District Court and Cause.]

### NOTICE OF APPEAL

Notice Is Hereby Given That the United States of America, the defendant in the above-entitled action, hereby appeals to the United States Court of Appeals for the Ninth Circuit from the Judgment

of the District Court entered in this action on July 29, 1954.

LAUGHLIN E. WATERS,  
United States Attorney;

MAX F. DEUTZ,  
Assistant U. S. Attorney;

MARVIN ZINMAN,  
Assistant U. S. Attorney;

/s/ MARVIN ZINMAN,  
Assistant U. S. Attorney,  
Attorneys for Defendant.

Affidavit of Service by Mail attached.

[Endorsed]: Filed September 23, 1954. [49]

---

[Title of District Court and Cause.]

#### NOTICE OF APPEAL

Notice Is Hereby Given That Adolph G. Sutro, the plaintiff in the above-entitled action, hereby appeals to the United States Court of Appeals for the Ninth Circuit from the Judgment Awarding Damages and Allowing Attorneys' Fees entered in this action on July 29, 1954.

Dated: September 27, 1954.

/s/ JOHN M. CRANSTON,  
Attorney for Plaintiff.

GRAY, CARY, AMES & FRYE,  
Of Counsel.

[Endorsed]: Filed September 24, 1954. [51]

In the United States District Court, Southern  
District of California, Central Division

No. 1183-SD Civil

ADOLPH G. SUTRO,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant.

REPORTER'S TRANSCRIPT  
OF PROCEEDINGS

Appearances:

For the Plaintiff:

GRAY, CARY, AMES & DRISCOLL, by  
JOHN M. CRANSTON, ESQ., and  
THOMAS ACKERMAN, ESQ.

For the Defendant:

LAUGHLIN E. WATERS,  
United States Attorney, by  
LOUIS LEE ABBOTT,  
Assistant United States Attorney; and  
AUGUST WEYMANN,  
Special Attorney, Lands Division.

Monday, March 1, 1954, 10:00 A.M.

The Court: Call the calendar, Mr. Clerk.

The Clerk: Yes, your Honor. Case No. 1183

Civil, Southern Division, Adolph G. Sutro v. United States of America, before Judge McCormick.

Your Honor, my record shows that John M. Cranston and Thomas Ackerman are representing the plaintiff, and Louis Lee Abbott, Assistant United States Attorney, representing the defendant. Mr. August Weymann also will be here.

The Court: Yes, Mr. Weymann was also associated of record. Proceed, gentlemen.

Mr. Cranston: Your Honor, may I at this time introduce to the court Mr. Ackerman. He has not previously appeared.

The Court: Yes. I am glad to see you here, Mr. Ackerman.

Mr. Cranston: I will call Mr. Ikemi. He was sworn in San Diego. Is it necessary that he be sworn again?

The Court: Just for the sake of the record, inasmuch as we have removed from the former scene of action temporarily, I think he had better be sworn again. [712\*]

#### TAIRI IKEMI

called as a witness by and on behalf of the plaintiff herein, having been first duly sworn, was examined and testified as follows:

The Clerk: Will you state your name?

The Witness: Tairi Ikemi.

The Clerk: How do you spell it?

The Witness: T-a-i-r-i I-k-e-m-i.

---

\*Page numbering appearing at top of page of original Reporter's Transcript of Record.

(Testimony of Tairi Ikemi.)

Direct Examination

By Mr. Cranston:

Q. Mr. Ikemi, you have previously testified in this action at the former hearing in San Diego, I believe? A. Yes.

Q. And you testified at that time that you at one time owned the land which is now owned by Mr. Sutro, and that you had farmed the land?

A. Yes.

Mr. Cranston: May I have this map and chart marked as our next exhibit, for identification, and the photograph marked as our next exhibit, for identification?

The Clerk: Do you know what exhibit numbers they are?

Mr. Cranston: I think our last exhibit was No. 31.

The Court: Whatever it is, it will follow in consecutive order.

The Clerk: Yes, your Honor. This map will be Plaintiff's [713] Exhibit 32, for identification. And is this the chart you refer to?

Mr. Cranston: Plaintiff's Exhibit 31 was the last number, according to the transcript.

The Clerk: And this photograph will be Plaintiff's Exhibit 33, for identification.

(The exhibits referred to were marked Plaintiff's Exhibits 32 and 33 for identification.)

(Testimony of Tairi Ikemi.)

Q. (By Mr. Cranston): Mr. Ikemi, I show you these two documents, which have been marked Exhibits 32 and 33, for identification—

A. Yes, sir.

Q. —and I ask you if 33, for identification, is a photograph, an aerial photograph of the Sutro property? A. Yes, sir.

Q. Which you formerly owned?

A. Yes, sir.

The Court: Speak a little louder, Mr. Ikemi.

Q. (By Mr. Cranston): This Exhibit 32, for identification, shows certain areas outlined in red, and I will ask you if you can identify the general lay of the land here. I point to an area marked "Pilgrim Creek," and ask you if that represents the way in which Pilgrim Creek flowed through the land you formerly owned and which Mr. Sutro now owns? A. Yes. [714]

Q. And is that the area shown in the photograph, Exhibit 33, for identification, with a black line and three dots—a black line with a representation somewhat resembling two horseshoes, and then a further black and dotted line running towards the bottom of the picture? Is that also Pilgrim Creek?

A. Yes.

Q. Now, calling your attention to these exhibits, at the time you owned the property did you irrigate an area which can be described as a field north of a road which is shown on Exhibit 32 by a dotted line, marked "Dirt Road," and going from there over to the base of the hills, the Santa Margarita fence line,

(Testimony of Tairi Ikemi.)

and running to Pilgrim Creek? A. Yes.

Q. Is that area which you irrigated shown as Field No. 4, enclosed in red lines, on this exhibit, 32 for identification? A. Yes.

Mr. Abbott: If the court please, I would appreciate it if these questions were not leading, unless there appears to be a real necessity for leading questions.

Mr. Cranston: I will endeavor to refrain from that.

Q. (By Mr. Cranston): Now, did you irrigate a main area lying to the west of Pilgrim Creek?

A. Yes. [715]

Q. Can you indicate on Exhibit 32, which is the map, or on Exhibit 33, which is the photograph, the area which you irrigated?

A. Well, it is this area right in here (indicating).

Q. Well, can you describe to the court what those boundaries were?

A. Well, it was bounded by Pilgrim Creek on one side, and there is a range of hills on the north boundary, and our boundary was way down—on the west side it ran right to this, near this Foss Lake, and I would say the south line was surrounded by this Foss Lake.

Q. And the east line would be where?

A. The east line would be Pilgrim Creek.

Q. And the west line would be where?

A. The west line would be—well, I would say it

(Testimony of Tairi Ikemi.)

was the Santa Margarita fence line there, right in here (indicating).

Q. Now, is there a dirt road, or was there a dirt road along the property?

A. Yes. I made it right along the foot of the hills, so that I could get around to all the places there.

Q. Did you farm it as far as the dirt road or not?

A. Yes, I farmed right up to the dirt road.

Q. Can you indicate on this Exhibit 32 the boundaries of this area which you have just referred to? Are they shown [716] on this exhibit by any lines? Is this the dirt road to which you have referred?

A. Yes, that is the dirt road to the—I would say, the north side.

The Court: Did you farm beyond that dirt road?

The Witness: No, I didn't. I farmed on the draw on the north side of the road, but I farmed it dry.

Q. (By Mr. Cranston): Did you irrigate the area between Pilgrim Creek and the dirt road?

A. Yes, that's right, and south near to this Foss Lake.

The Court: Foss Lake?

The Witness: Yes, sir.

The Court: Where would Foss Lake be?

The Witness: It would be right in through here (indicating).

The Court: It isn't indicated by any delineation?

(Testimony of Tairi Ikemi.)

The Witness: No.

Q. (By Mr. Cranston): Did you irrigate as far as the south boundary of your property?

A. Yes.

Q. Now, did you irrigate any areas on the other side of Pilgrim Creek, from the areas we have discussed?

A. Yes. I farmed this No. 5 showing on this map here, and No. 6. [717]

Q. Now, what were the boundaries you referred to as No. 5 on the map?

A. Well, the north end of this property was—it was a range of hills there, and a slope on the east side, and—

Q. Did the dirt road continue across the creek there, the dirt road you previously testified to?

A. Yes.

Q. And did you farm to the dirt road?

A. Yes. Then southward to this other hill, right on the south end.

Q. Showing you Exhibit 33, for identification, can you show on this picture the field that you have referred to as No. 5?

A. Yes. It is this right here (indicating), and this is—

Q. That is, that is an area which is lighter in color than the surrounding area?

A. No, that is No. 5.

Q. Yes. No. 5 is what you have been talking about? A. Yes.

(Testimony of Tairi Ikemi.)

Q. Between the black line and what is Pilgrim Creek? A. Yes.

Q. All right. Did you farm any other area? Pardon me. Did you irrigate this area?

A. Yes, I did. [718]

Q. Did you irrigate any other areas to the east of Pilgrim Creek?

A. Yes, I irrigated this No. 6 showing on the map.

Q. And does that show on the photograph also?

A. Yes.

Q. Can you indicate where it shows on the photograph?

A. Well, it indicates right here (indicating).

Q. That is indicating the area line between what you have previously referred to as Pilgrim Creek, and another dotted black line? A. Yes.

Q. It is also a somewhat different color than the surrounding area, a lighter color? A. Yes.

Q. Now, what were the boundaries of this field that you have referred to as No. 6?

A. Well, the west side was this Pilgrim Creek, and the east side, the range of hills which is surrounding it to the south, and the north side has this point of the hill coming to this—near this Pilgrim Creek there.

Q. Now, can you describe in general the contour or the elevation of the land that you cultivated, that is, with respect to whether it was hilly or flat?

A. Well, I would say this No. 5 and 6 were flat.

Q. And how was the extent of the area that you

(Testimony of Tairi Ikemi.)

cultivated [719] determined? That is, did you leave additional flat land that you did not cultivate, or did you cultivate to the foot of the hill?

A. I cultivated to the foot of the hill.

Q. Now, there is another area which is shown on this photograph as lighter in color, and a very irregular shape. Can you identify that area on the chart? Is that shown in any area here?

A. Yes, it is right here (indicating).

Q. Did you irrigate that area?

A. Yes, I did.

Q. Now, what were the boundaries of this area which you irrigated?

A. Well, this particular plot of land was like a mesa, flat on top and the sides kind of dropped off, so we were farming right on this mesa here.

Q. Did you irrigate this area you have referred to as a mesa? A. Yes.

Q. Did you irrigate all of it?

A. Yes, excepting right to this point here (indicating).

Q. Indicating a narrow neck of land near a point on the map marked "knoll"; is that correct?

A. Yes, that's right. [720]

Q. I notice that there is a contour marked 145, and then another one marked 138, and one marked 140. With reference to these lines I have referred to, where did you stop irrigating?

A. Well, I would say it was on this 145.

Q. Yes. That is, you did not drop below the area marked 145 on the map?

(Testimony of Tairi Ikemi.)

A. No, that's right.

Q. Now, there is on this map a dotted area with the words "dirt reservoir." What is indicated by that?

A. Well, I had a reservoir—I made a reservoir up there to store some water up there.

Q. You mean that was placed there by you?

A. Yes, that's right.

Q. And you used that in watering the mesa?

A. Yes. No, I didn't, that is, not for the mesa. I had a direct line all the way up to the northern tip of this mesa, to irrigate the mesa, and this reservoir that I had there was more or less for, oh, livestock, and I had a horse—to water the horse, and to irrigate the lower land.

Q. I see. Was this reservoir high enough to irrigate the mesa? A. No, it wasn't.

The Court: Where did you get the water for that reservoir? [721]

The Witness: From the main pump near the house.

The Court: You pumped from the creek, did you?

The Witness: No, this particular property was irrigated from this well that we had—the main well that we had up there.

The Court: Up where?

The Witness: Up by the house.

The Court: Did you hear the testimony in the case down in San Diego?

The Witness: Yes.

(Testimony of Tairi Ikemi.)

The Court: And that house well, is that the one you referred to?

The Witness: Yes.

The Court: That is where you got the water to put in this reservoir?

The Witness: Yes.

The Court How did you get it down to the reservoir?

The Witness: Well, I had a 10-inch steel pipe up to this reservoir.

Q. (By Mr. Cranston): Did you pump any water into the reservoir from your pump in Pilgrim Creek? A. No, I didn't.

The Court: Before you leave that—

Mr. Cranston: Yes.

The Court: Was that water drinking water? Did you drink [722] that water, or the family drink the water?

The Witness: Oh, yes, we drank this water from the well there.

The Court: That was used for domestic purposes?

The Witness: Yes.

The Court: As well as farming purposes?

The Witness: Yes.

The Court: And the folks didn't get sick, did they?

The Witness: No.

Q. (By Mr. Cranston): Now, at the time you were farming this land, Mr. Ikemi, was there any difference between the land closest to Foss Lake and

(Testimony of Tairi Ikemi.)

the balance of this main area between Pilgrim Creek and the dirt road?

Mr. Abbott: I will object to that question, your Honor, as going into a matter which has already been precluded by the Court's findings. The matter refers to the increase in the water table, which has previously been argued before the court, and the court has previously rejected any findings of liability on that subject.

Mr. Cranston: If the court please, this is not intended to lay any foundation on that point. It is directed to another point, and to the useability of the land under certain conditions. It is directed to the useability of the land if it is properly reclaimed.

The Court: I think that all Mr. Ikemi would testify to [723] is whether he used it or not.

Mr. Cranston: That is what I am trying to find out, whether there was any difference between that—

The Court: Regarding the contours and the water levels, and so forth, unless he is to testify to that, he cannot state whether he used the water.

Mr. Cranston: I want to find out if he used the land. That is what my question was directed to.

The Court: Overruled. We are not going into the issue of silting now.

Mr. Cranston: No.

The Court: We understand each other, do we?

Mr. Cranston: Yes.

The Court: Objection overruled. You may answer the question.

(Testimony of Tairi Ikemi.)

The Witness: Yes, I farmed it.

Q. (By Mr. Cranston): How long have you been a farmer, Mr. Ikemi?

A. Well, ever since I left high school I have been a farmer.

Q. You farmed other land, in addition to this land? A. Yes, I have.

Q. Was this land as good as the other land that you have farmed?

Mr. Abbott: Objection. Far too general. [724]

The Court: Sustained.

Q. (By Mr. Cranston): Have you ever farmed any land that was any better than this land?

Mr. Abbott: I will object to that. We have no basis for comparison. We don't know what the land the witness has farmed is, where it is located, and we don't even know how many parcels he has farmed.

The Court: I don't see how we would have any basis for comparison as far as Mr. Ikemi is concerned. I will overrule the objection, to save time.

The Witness: Well, I farmed in Vista before this, prior to this, and I thought this land was much better, so I moved down there to San Luis Rey.

Mr. Cranston: That is all. You may cross-examine.

#### Cross-Examination

By Mr. Abbott:

Q. Mr. Ikemi, when did you purchase the land in question?

A. Well, I purchased it in—I don't have the

(Testimony of Tairi Ikemi.)

records, but it must have been in September of 1939.

Q. And when did you sell it?

A. Oh, I didn't sell it. I was evacuated and the bank foreclosed on me, and I lost it because I was evacuated.

Q. How much did you pay for the land when you purchased it? [725]

Mr. Cranston: If the court please, I will object to that as immaterial in this action, what he paid for it in 1939. We are not even concerned with its market value at the present time.

Mr. Abbott: Your Honor, we will establish certain ratios between rental value and fair market value. It is not always possible to establish sales on the precise date or at the same time with which the court is concerned.

The Court: That is about seven years prior to the acquisition by Mr. Sutro.

Mr. Abbott: Yes, your Honor.

The Court: I think that is getting a little far afield. Sustained.

Q. (By Mr. Abbott): Did you farm this land after you returned from evacuation, Mr. Ikemi?

A. No, I didn't, because I had no claim to it after I come back.

Q. What was the last year in which you did farm the land?

A. It was 1942. At the time we were evacuated, I was still farming it.

Q. You at no time farmed the land as a tenant

(Testimony of Tairi Ikemi.)

while Mr. Brown was the owner of the property?

A. No.

Q. Did you farm all of the acreage which you found to [726] be tillable, Mr. Ikemi?

A. Yes.

Q. How many acres was that, in the aggregate?

A. Well, I never had it surveyed, so I wouldn't know.

Q. Can you give us an approximation?

A. Oh, at the San Diego trial, this irrigated land I guessed at 75 acres, but according to figures it must be more.

Q. According to what figures?

A. Of Mr. Sutro's survey.

The Court: I would like to ask a question there.

Mr. Abbott: Yes, your Honor.

The Court: This Exhibit 32 has on it in certain areas certain figures of purported acreage. Do you know anything about those figures?

The Witness: No, I don't. I don't know anything about it.

The Court: Have you examined Exhibit 32 so as to determine in your own mind whether or not that represents the various acreages?

The Witness: Yes.

The Court: And that makes up how much? 75 acres?

The Witness: I thought it was 75.

The Court: You thought the entire acreage that you were farming amounted to 75 acres? [727]

The Witness: Yes; this irrigated land, yes.

(Testimony of Tairi Ikemi.)

The Court: Now, let's be a little more specific. You say this irrigated land. Did you farm other land that you do not classify as irrigated land?

The Witness: Yes, I farmed quite a bit more.

The Court: Dry land?

The Witness: Yes, dry land.

The Court: Did the water supply come entirely from this reservoir that you installed there yourself?

The Witness: No, I pumped that direct, and during the night I would pump some water up to the reservoir, and supplement it during the day, add it on the main line, to irrigate the lower—this lower piece of land.

The Court: Would you pump that water from Pilgrim Creek or from this well?

The Witness: From this reservoir. The water that I put up to the reservoir was pumped from the well by the house.

The Court: But you said you boosted the volume of that water. Where did you get that volume from, that boost?

The Witness: I got this from the well. I didn't get it from Pilgrim Creek.

Q. (By Mr. Cranston): Mr. Ikemi, did you put the red lines on Exhibit 32, for identification, that now appear there? [728]

A. No, I did not.

Q. Do you know who did put them there?

A. I don't know.

(Testimony of Tairi Ikemi.)

Q. Did you participate in the placing of those red lines in order to show where they should go?

A. No, I didn't.

Q. You have testified that in your opinion the irrigated acreage farmed by you was approximately 75 acres. How many acres did you dry farm?

A. I dry farmed an additional, I would say, 75 acres.

The Court: An additional 75 acres?

The Witness: Yes.

Q. (By Mr. Abbott): In your opinion, as a farmer, Mr. Ikemi, were you farming all of the land which could be profitably farmed during that period?

Mr. Cranston: If the court please, I will object to that on the same grounds Mr. Abbott urged to the question I asked Mr. Ikemi. It is too general.

The Court: Overruled. You have been a farmer since you left high school?

The Witness: Yes.

The Court: You look like a young man, but how many years were you farming before you were evacuated?

The Witness: Well, I would say—as an apprentice farmer with my father, I would say I knew about farming, oh, [729] from the age of 15, I was managing my father's farm.

The Court: How old were you when you were evacuated—about?

The Witness: Well, I would say I was—

The Court: Approximately. We are not pinning

(Testimony of Tairi Ikemi.)

you down to any certain number of years.

The Witness: I would say 31.

The Court: 31?

The Witness: Yes.

The Court: You may answer the question. Overruled. Will you read the question, please?

Mr. Abbott: Will you read the pending question, please?

(The question referred to was read by the reporter, as follows:)

"Q. In your opinion, as a farmer, Mr. Ikemi, were you farming all of the land which could be profitably farmed during that period?"

The Witness: Yes.

Q. (By Mr. Abbott): Mr. Ikemi, what buildings did you have on the property during that period which were useful in that farming operation?

A. Well, I had the house, my main house there, and a bunk house for the hired hands, and I had a kitchen for the boys.

Q. Are all of those structures presently on the land, [730] if you know?

A. I don't think so, no.

Q. Which ones are not there?

A. They are all not there, excepting one of the —I went there at one time, and I just noticed one of them that was partially there. It had all been removed, I think.

Q. Well, will you identify which structures were still there when you last saw the land?

(Testimony of Tairi Ikemi.)

A. I think it was the kitchen there was the only one, for the employees.

Q. Was the bunk house still there when you were last on the land?

A. No, it wasn't. It was there, yes, but it wasn't when I returned.

Q. When was it that you last saw the bunk house on the property?

A. Well, at the time of the evacuation.

Q. How large was the bunk house?

A. It must have been 16 by 32.

Q. Was it a frame structure?

A. Yes. It had no foundation at all, I don't think. It was on piers.

Q. What was the nature of the floor?

A. Just tongue and groove.

Q. Did it have any plumbing? [731]

A. No, it didn't.

Mr. Cranston: If the court please, I have no objection to his examining the witness, but I think he is his own witness for this part. This is not cross-examination, but if he wants to go into it as his own witness, all right.

The Court: It is in the record now, but I don't think you had better proceed in that way.

Mr. Abbott: I would like to go into some of these matters with him as my own witness, your Honor.

The Court: If that is the case, you had better call him as your own witness.

Mr. Abbott: I will do it for a limited number

(Testimony of Tairi Ikemi.)

of questions, and then return to cross-examination, if I may.

The Court: If that is satisfactory.

Mr. Cranston: That is satisfactory.

The Court: All right.

Q. (By Mr. Abbott): What were the dimensions of the kitchen, Mr. Ikemi?

A. Well, I don't know. It must have been 12 by 20 and there was an addition of 8 by 12 on the rear side.

Q. Did the kitchen have any plumbing facilities?

A. Yes.

Q. The third building you mentioned was a residence? A. Yes.

Q. That is no longer upon the property? [732]

A. No.

Q. How large was that residence, Mr. Ikemi?

A. I would say it was around 20 by 30.

Q. Was it a frame structure? A. Yes.

Q. Did it have plumbing? A. Yes.

Q. Did it have a bathroom?

A. Well, no, we didn't have good plumbing in there at that time.

Q. Well, it just had running cold water for plumbing? A. Yes.

Q. The same is true of the kitchen, I take it?

A. Yes.

Q. Now, how many tractors did you own and use to farm the land, Mr. Ikemi?

A. Oh, I had two.

Q. Did you have any other self-propelled equip-

(Testimony of Tairi Ikemi.)

ment? A. Yes, my trucks and pick-up.

Q. How many trucks did you have?

A. I had one truck, and a pick-up, and a car.

Q. What kind of a truck was that?

A. I had a Ford truck.

Q. Do you know the loading rating on it?

A. A ton and a half. [733]

Q. And what was the loading rating on the pick-up truck? A. A half ton.

Mr. Cranston: May I have the witness' answers on the last questions, please?

(Record read.)

Q. (By Mr. Abbott): Did you have any mechanical shop equipment which was operated by power of any type?

A. Oh, we don't have power at that time, so we didn't have any sort.

Q. During the period you were farming the land, you testified to having used water from the house well on the upper mesa. What was the source of water for the other areas which you irrigated?

A. This I pumped out of this Pilgrim Creek.

Q. Now, were any of the years in which you were using that Pilgrim Creek water for farming dry years in the area, Mr. Ikemi?

A. Well, after we developed all the land on the bottom there, until the excavation it was never dry.

Q. You have identified certain areas on Exhibit 32, for identification, as areas in which you irrigated. Going over them one by one, will you tell us

(Testimony of Tairi Ikemi.)

what crops were planted in each of the areas? First, in the area marked "1," what crops were planted there? [734]

A. Well, it varied from year to year. I rotated.

Q. Well, which crops did you grow? Describe them all, if you will.

A. Well, I had tomatoes the first year, and chili the following year, and where I didn't plant the tomatoes the first year, I would have strawberries. I would always plant the strawberries on the land that I didn't put the tomatoes on.

Q. Were there any other crops in that area generally described as 1 during that time that you farmed the land? A. I didn't get that.

Q. Did you grow any other crops in Area 1 besides those you have already named?

A. No. For winter I have raised lots of lettuce and celery.

Q. What crops did you grow in Area No. 4?

A. On No. 4 I raised strawberries, and tomatoes, and chili.

Mr. Abbott: Now, may the record show that from this point forward in the examination this is cross-examination again, your Honor?

The Court: Yes.

Q. (By Mr. Abbott): Any other crops grown in Area No. 4? [735]

A. Yes. I don't know whether I said tomatoes or not.

Q. What crops did you grow in Area No. 5, Mr. Ikemi?

(Testimony of Tairi Ikemi.)

A. Strawberries, tomatoes, and chili.

Q. What crops did you grow in Area 6?

A. I raised tomatoes and chili.

Q. I believe you have testified that you grew no crops in Area No. 2?

A. No, that is a range of hills there.

Q. What crops did you grow on the mesa, which is marked Area No. 7?

A. I raised strawberries, tomatoes, squash.

Q. Are there any other crops that you have grown on the range which you haven't described thus far in your testimony?

A. Cabbage and beans.

Q. Where were they grown?

A. I raised beans on the mesa, and also beans on the lower ground, and—

Q. What kind of beans were those?

A. String beans.

Q. Did you ever grow any black-eye beans?

A. No.

Q. Did you have livestock feeding on the ranch during the period you owned it, Mr. Ikemi?

A. No, I didn't. I just had the two horses that I [736] cultivated with.

Mr. Abbott: No further questions at this time, your Honor.

#### Redirect Examination

By Mr. Cranston:

Q. Mr. Ikemi, I believe you testified that you had never surveyed this property, and the figures

(Testimony of Tairi Ikemi.)

you have given are purely your own estimates; is that correct? A. That's right.

Q. What crops did you grow on the dry farm property?

A. I just raised tomatoes, the early variety of tomatoes, dry, and grain, hay for the horses.

Q. Mr. Ikemi, will strawberries grow on land which has any alkali or salt content?

Mr. Abbott: I object to that. Counsel is again raising this question of the water table.

Mr. Cranston: No.

Mr. Abbott: It has no further materiality.

The Court: I don't see the materiality of it now. It may become so later. It isn't apparent to the court now. Sustained.

Q. (By Mr. Cranston): Mr. Ikemi, was there any connection between the pump which you had in Pilgrim Creek and the lines leading from the well? Could water be diverted from one to the other or not? [737]

A. Well, on this mesa it could not be diverted, but to irrigate this lower piece of land, that could be diverted.

Q. That is, on the lower land, that could be watered from either source, depending upon which source you wished to use? A. Yes.

Mr. Cranston: That is all, Mr. Ikemi.

#### Recross-Examination

By Mr. Abbott:

Q. I have one or two more questions. Mr. Ikemi,

(Testimony of Tairi Ikemi.)

as a farmer, have you had experience in estimating acreage by reason of crop return?

A. No, I haven't.

Q. Well, is it your practice to measure the return of your crop in turns of yield per acre?

A. Yes, but I never did get into that.

Q. Mr. Ikemi, what type of irrigation system did you use on this property?

A. This open ditch irrigation, I would say.

Q. And was that true of the entire area which you irrigated? A. All excepting the mesa.

Q. What system did you use there?

A. Well, I run the water on the flume.

Q. I don't think I understand you. [738]

A. On the flume, or water trough.

The Court: I understood you to say you installed a steel pipe up there.

The Witness: Yes, but it was to divert the water into small furrows to irrigate those vegetables, and I would run it into this open flume, and that had holes in it, and when the crops had enough water, I would plug it up with paper, and divert it to other rows.

Mr. Abbott: We have no further questions, your Honor.

The Court: That open flume, was that earthen?

The Witness: No, it was a wooden trough.

The Court: You built it yourself?

The Witness: Yes.

(Testimony of Tairi Ikemi.)

Redirect Examination

By Mr. Cranston:

Q. Mr. Ikemi, to explain your last answer possibly, how did you get the water to the top of the mesa land?

A. Well, I had a concrete line going three-quarters of the way, and I had a surface pipe to the very north end.

Q. And from there, how did the water go?

A. Well, I irrigated—I run the water into these flumes, which irrigated them.

Mr. Cranston: That is all.

Mr. Abbott: No further questions.

Mr. Cranston: May the witness be excused, your Honor? [739]

The Court: Yes, I think so, unless you want him to remain.

Mr. Abbott: No. I have endeavored to anticipate further testimony. May it be understood if necessary the witness may be called back? I have attempted to go into matters which might be covered, and I hope it will not be necessary to call him back.

The Court: You live down there?

The Witness: Yes.

The Court: You will be available on a day or two days' notice?

The Witness: Well, I couldn't say, I am pretty busy. I have five or six men employed out there right now, and this nursery business that I have gone

(Testimony of Tairi Ikemi.)

into is keeping me pretty busy. I have to get back there as soon as I can.

The Court: They will give you some notice, if they need you. They don't know if they will need you or not.

Mr. Abbott: I don't think it will be necessary, but can you give us your address, Mr. Ikemi?

The Witness: It is 3791 Jefferson Street in Carlsbad.

The Court: I want to ask one further question, Mr. Ikemi. Just be seated, please.

Did you have your family down there in this dwelling house?

The Witness: Yes. [740]

The Court: How much of a family did you have?

The Witness: I had three sisters, and my folks, and my brother.

The Court: Were they all adults—grown?

The Witness: Yes.

The Court: No children there at all?

The Witness: Well, my sister was still going to high school.

The Court: How many folks would that make?

The Witness: And my wife at that time.

The Court: That is how many?

The Witness: And I had—just about the time I was evacuated, well, I had my little daughter.

The Court: How old was she?

The Witness: I think she must have been about 15-months old.

The Court: And the water that was used there

(Testimony of Tairi Ikemi.)

in culinary, in cooking, and so forth, was water that came from where?

The Witness: From the well.

The Court: And you said there was also a bunk house. How many men were there working there?

The Witness: Well, during the strawberries we would have, oh, six to eight men.

The Court: They lived right on the premises, did they, during the harvest time? [741]

The Witness: Yes.

The Court: Did they drink the water that was there?

The Witness: Yes.

The Court: Did they get sick?

The Witness: Never did.

The Court: Did you have to call in a doctor?

The Witness: No, never did.

The Court: That is all.

Mr. Abbott: May I ask one additional question suggested by Mr. Weymann?

The Court: Yes.

#### Recross-Examination

By Mr. Abbott:

Q. When you were taking water from Pilgrim Creek, Mr. Ikemi, for use in irrigation, were you taking it from surface waters or were you digging some sort of sump or well?

A. Well, I had this concrete well casing down to about 10 feet, and just as soon as it started to get a little low, well, I would lock up the river there, this

(Testimony of Tairi Ikemi.)

Pilgrim Creek, and have a little dam there, and I pumped it out of there.

Q. Did you find any surface flow in Pilgrim Creek during the summer months?

A. Yes, sir.

Q. In the years 1939 to 1942, I take it, that was the case? [742] A. Yes.

Q. Was it a continuous surface flow during the summer months of those years? A. Yes.

Mr. Abbott: Thank you. That is all.

Mr. Cranston: That is all.

The Court: That is all, Mr. Ikemi.

(Witness excused.)

Mr. Cranston: Mr. Tedford, please.

#### CLARENCE P. TEDFORD

called as a witness by and on behalf of the plaintiff herein, having been first duly sworn, was examined and testified as follows:

The Clerk: Your full name?

The Witness: Clarence P. Tedford.

The Clerk: How do you spell your last name?

The Witness: T-e-d-f-o-r-d.

The Clerk: Thank you.

#### Direct Examination

By Mr. Cranston:

Q. Will you state your name, please?

A. Clarence P. Tedford.

Q. And what is your present occupation?

(Testimony of Clarence P. Tedford.)

A. Well, I guess I am a farmer. [743]

Q. What was your former occupation?

A. Well, I was with the Soil Conservation Service in Fallbrook, servicing this whole area as a district, conservationist district, from the time the middle San Luis Rey Soil District was formed in '42, I believe it was.

Q. When you say "district," what district are you referring to?

A. Well, included in this controversy here.

Q. That is, including the land owned by Mr. Sutro? A. That's right.

Q. How long have you been in San Diego County, Mr. Tedford?

A. Oh, about 20 years.

Q. Have you examined Mr. Sutro's property personally?

A. Yes. I have known it since probably, oh, '42, '44, '46, somewhere along in there.

Q. Have you been on it at various times?

A. Yes, numerous times.

Q. Have you made an examination of the nature of the soil upon this property?

A. Yes. Through my soils man, we made a survey of that whole territory, including this ranch, along I believe in 1946, in there some time, outlining all the different types of soil, the slopes, and so forth.

Q. I will show you the aerial photograph which has been [744] marked Exhibit 33, for identification, and ask you if this photograph represents an aerial survey which was used by the Soil Conservation

(Testimony of Clarence P. Tedford.)

office? A. Yes, we made the map.

Q. You made this map in your office?

A. Yes.

Mr. Cranston: At this time, then, I will offer in evidence this particular map. That is, I am not at the present time offering the report, but I believe possibly the map is proper. If Mr. Abbott wishes the legends, that is all right. If he doesn't wish the legends, we can leave that out.

Mr. Abbott: Well, perhaps to obviate any objection we might have, counsel, you might inquire how these various markings got on the top, particularly, the designation of the crop acreage. I don't know if those are actual or proposed acreages, or what.

The Witness: No, they were pretty accurate measurements.

Mr. Cranston: That is, these were simply—this legend is: "Truck, Pasture, and Pasture Proposed." It had not been put there at the time?

The Witness: It had been in crops prior to the time this was made.

At that time they proposed putting alfalfa in here, and using the balance of the top here for various kinds of crops.

Of course, at that time it hadn't—this part [745] wasn't under irrigation, and it could not be irrigated, and this part was questionable (indicating), whether it could be irrigated or not. That is why it was worked out with that in mind.

The Court: Mr. Tedford, where did you get the

(Testimony of Clarence P. Tedford.)  
information which led you to make those?

The Witness: From our soils maps.

If I may explain to you, here is your soils classification. You see, it runs from 1, 2, 3, 4, up to 6, and so forth, and your brown areas are your more or less hilly areas, your yellows are your bottom flat lands. They are class 2 lands, and that would determine your field crops principally, and whether you could irrigate them satisfactorily and economically.

The Court: And are those indicated on the legend there?

The Witness: Well, your legend—at the time this was written, that was what they had in mind planting.

The Court: Where did you get that information?

The Witness: Well, from the owner.

The Court: Who was that?

The Witness: Well, it was Mr. Sutro at the time; what he proposed—what he thought he would do.

The Court: Yes.

Mr. Cranston: The photograph is offered in evidence, your Honor.

The Court: As a matter of illustrating it? [746]

Mr. Cranston: Yes.

Mr. Abbott: We have no objection to the photograph and the legends. In the same folder, however, there is a detailed report which government counsel have not yet had an opportunity to read, and, therefore, we would appreciate a reservation at this

(Testimony of Clarence P. Tedford.)

time until we have time in recess, or otherwise, to read that.

Mr. Cranston: Well, that report is not offered at the present time.

The Court: The offer will be received as made.

(The photograph referred to was received in evidence and marked Plaintiff's Exhibit No. 33.)

Q. (By Mr. Cranston): Now, Mr. Tedford, I will show you the map or chart which has been referred to by Mr. Ikemi, which has been marked Exhibit 32, for identification, and ask you if you have seen this before.

A. Yes, I have. It was made in our office. The map was made on my survey. My engineers run all this contour work on it. These are contour—actual contour elevations above sea level, and it gives your steepness of your whole property.

Q. Now, there are certain red lines on the map, and within the red lined areas there are numbers, such as No. 11, to which I point at the present time, and then below that other numbers, "55 ac." [747]

A. Acres.

Q. Can you tell me what is indicated by the red lines and by these pencil notations?

A. Well, in referring to your other map there, you will find that these lines follow very closely to lines of your various land classifications. When you get over to this line, you start up steeper.

This stuff, you can see by the distance between

(Testimony of Clarence P. Tedford.)

your various elevations, there is only 12 inches variation in your elevations. So that you can see from you contour lines is very flat land, and can be irrigated that way. It all slopes pretty well. Well, it is going to take considerable leveling, but you can irrigate it very satisfactorily.

The same thing is true within this area in here (indicating).

Q. Well, that is—

A. Well, these were outlined with the chances they were going to be the areas that could be irrigated satisfactorily and economically.

Q. Now, specifically, what does the figure "55 ac." mean, and what area is denoted by that?

A. Well, that is the total area of this—the total acre area of this Field 11.

Q. In other words, the No. 11 indicates under your system that this is Field No. 11? [748]

A. That's right.

Q. And it is 55 acres?

A. Included in that field.

Q. Within the red lines?

A. That's right.

Q. Now, No. 6, it then indicates the area within the red lines surrounding that?

A. That's right.

Q. And are there 7.77 acres in that field?

A. That's right.

Q. No. 5 indicates the area within the red lines surrounding it, and it contains 5.95 acres?

A. That's right.

(Testimony of Clarence P. Tedford.)

Q. No. 4 indicates the field contained within the red lines surrounding it, and it contains 6.7 acres?

A. That's right.

Q. And No. 7 indicates the area contained within the red lines surrounding it, and it contains 17.72 acres? A. Right.

Q. In addition to those fields which were referred to by Mr. Ikemi, in his testimony, there is an area called No. 1, containing figures 2.2. Does that indicate that field contains 2.2 acres?

A. That's right.

Q. And another field marked No. 2. Does that [749] contain 2.77 acres? A. That's right.

Q. Another marked No. 3. Does that contain 1.09 acres? A. Yes, sir.

Q. And then going to the other end of the map, there is a field marked No. 8, with the mark "3.01 ac." Does that contain 3.01 acres? A. It does.

Q. And what is the boundary line between Field No. 8 and Filed No. 7?

A. Well, it is right here (indicating).

Q. It is the 145 foot contour line?

A. That's right.

Q. Then there is a field marked No. 9. Does that represent that area within the red lines surrounding it? A. That's right.

Q. And the acreage is 13.25?

A. That's right.

Q. And No. 10, does that contain 28.4 acres?

A. That's right.

(Testimony of Clarence P. Tedford.)

Q. These were actual measurements made by you? A. They are.

Q. Now, what determined the boundaries, say, of Field No. 1 and Field No. 2? Why is the line drawn where it is instead of including all that in one area? [750]

A. It is a little too steep, and the soil isn't quite as good?

Q. What is too steep?

A. This area in this here (indicating).

Q. That is the area between Fields Nos. 1 and 2?

A. Yes. It is pretty badly eroded, and it would hardly pay to try to do anything with it, that is, so far as cultivation is concerned.

Q. Is the area within Field No. 1 suitable for irrigation, or is it not suitable?

A. It could be irrigated, but it would be a chore. I would say these two are too steep for economical irrigation.

Mr. Abbott: Let the record show that the witness has pointed to areas 1 and 2 in the upper left-hand corner of the chart.

The Witness: They could be irrigated, but it is probably not economical. The soils are good.

Q. (By Mr. Cranston): That is, it would require more labor to irrigate those?

A. That's right.

Q. Now, what about the fields marked 8, 9, and 10?

A. They could be irrigated very nicely. I should not say very nicely—very easily.

(Testimony of Clarence P. Tedford.)

This could be very nicely. You can see your contours on it. There isn't much fall, more than what you call the mesa. [751]

Q. That is, not much more than No. 7?

A. No. It would irrigate.

The Court: I didn't hear that.

The Witness: I say those Fields 9 and 10 would irrigate nicely, as easily as Filed 7, due to the slope of them.

The Court: Could they be irrigated so as to produce crops economically and profitably?

The Witness: Well, there you have got a question. Your soil types are a little bit different. Possibly yes, They could not be cropped two crops a year, like they do on a lot of those properties. They are harder soils to operate. They have to be handled just at the right time. They are Diablo and clay soils, which are very rich soils, although they have to be handled just right, and have to be irrigated just right. It takes more time to do it. It could be worked in very nicely, I think, if the water was available.

The Court: You mean it is feasible, or it is economically probable?

The Witness: I think it is feasible.

The Court: I guess any land down in that vicinity is feasible for irrigation if you have the water.

The Witness: Well, with the exception of too much erosion. You have to get your water across these ditches, and that is an economical impossi-

(Testimony of Clarence P. Tedford.)

bility in lots of cases. I don't think that in there is eroded very much. It is stuff that had been [752] planted to grain crops.

Q. (By Mr. Cranston): I think I neglected to ask you about Field No. 3. It is a small one with 1.09 in it.

A. That is too steep to economically put into irrigation, I would say.

Q. Now, what is the nature of the soils comprising the Sutro property? Have you determined the nature of the soils, and the approximate acreage in each type?

A. You have 2, 4, 6—7 different types of soil on the property. Those differentials are very slight in some cases.

For your bottom, you have a Hanford and a Foster type soil, and there is a soil map on there somewhere right on top, if you want to get it.

It breaks in here (indicating). Then you have a Tujunga. That follows down in this area in here, and comes across there (indicating), which is a sandy soil.

That is your three soils in this bottom here, and you have got some of it in some of your deeper soils in there.

Q. About how many acres are there of each of those types?

A. You have 27.5 acres of Hanford, you have 22 even of Foster, and you have 33.8 of Tujunga, which are excellent types.

Q. Did you mention Greenfield? [753]

(Testimony of Clarence P. Tedford.)

A. Your Greenfield is up on this mesa.

Q. And how many acres of that?

A. In Greenfield you have 35 acres.

Q. And what other types of soils are there?

A. Besides you have a little Botella, that lays in here (indicating), which is an excellent soil, but it is a little steep.

Q. That is in Field No. 2?

A. Yes. Then you have your Diablos here in Fields 9 and 10 in here (indicating).

Then you have Merriam soils, and your Diablos run in right close along Camp Pendleton there. There is some Diablo in here (indicating).

Q. Is that a desirable soil?

A. It is a very desirable soil. It is adobe. You know what adobe is. It is a strong soil. It has to be worked just right, and has to be irrigated just right, but it is strong soil, and will raise wonderful crops if properly handled.

Q. What about your Greenfield soil?

A. It is an excellent soil.

Q. That is in Field 7?

A. That's right; and there is 35 acres of Greenfield.

Q. That is, it covers this area plus other areas?

A. Well, it runs down on your slopes a little more than this shows here. It doesn't just exactly follow this [754] field. It includes that field, and some additional.

Q. Additional area which is on a steeper slope?

A. On probably a little steeper slope. It is an ex-

(Testimony of Clarence P. Tedford.)

cellent soil. It is a deep soil, and can raise any kind of crops. It is an easy soil to handle. It is a tough soil, and very similar to your Hanford and Foster.

Q. What about the Hanford soil and the Foster soil?

A. They are an easy soil to work. They are very deep, hold moisture very well, and will raise an excellent crop.

They are—we consider them as a crop soil. They are probably the best. And your Foster is just about the same. It is a little finer texture is the only thing. That is the only difference between your Hanford and your Foster. They are both excellent soils.

And your Tujunga—your Tujunga was classified Tujunga because of the overburden from the deposit from the creek.

Q. What is the Tujunga soil?

A. It is a sandy soil. It is just a deposit from your creek.

Q. Now, have you been on Mr. Sutro's property recently?

A. I was over it some time last week.

Q. Now, at the time that you were there, did you observe that part of it had been rendered alkaline?

Mr. Cranston: I have your Honor's ruling in mind.

The Witness: Yes. [755]

Q. (By Mr. Cranston): Is it possible by proper drainage facilities to restore that soil to production?

Mr. Abbott: Your Honor, I must make the ob-

(Testimony of Clarence P. Tedford.)

jection for the record. Counsel says he has the court's ruling in mind, and I respect counsel's opinion there, but I know of no other materiality there other than once again raising the question of the water level at Foss Lake.

Mr. Cranston: Maybe I might explain this both to counsel and the court. This is not to obtain damages by the raising of the water level, particularly, in the raising that occurred prior to Mr. Sutro's purchase of the property, and in deference to your Honor's ruling we will waive the claim for damages due to raising the water table afterwards. The purpose is to establish the fact that the land could be drained, and, therefore, that being the case, I believe we are entitled to recover as damages the damages of the cost of draining it in 1946, when we purchased the property, and the cost of the present date so as to restore it to cultivation. That is, we are not claiming damages because it was rendered alkaline, but merely the damages between the cost of restoring it to production at that time and the cost of restoring it to production now.

Mr. Abbott: Your Honor, I don't want to be premature, but we will enter the objection to any such evidence, and this goes for all other evidence of a similar character, that there [756] has been no showing here, nor do I anticipate there will be a showing, that the land could not have been farmed in 1946, and that the draining could not have occurred in 1946, and, therefore, there is no reason in

(Testimony of Clarence P. Tedford.)

fact or in law for not doing the work in 1946, if it was an economic project at all.

The Court: I am inclined to agree with that situation. The objection is sustained.

Mr. Cranston: Is your Honor open to argument?

The Court: Not to argument. I am open to a change of view, if there is any substantial reason for doing so. I think that is getting into speculative and prospective avenues that would lead us into an invasion of the other ruling of the court.

Mr. Cranston: Well, in deference to your Honor's ruling, may I state this: That we do intend to establish by testimony that Mr. Sutro from the very time he purchased the property intended to drain that land.

The Court: When we hear Mr. Sutro testify, we will be better able to evaluate that phase of the situation.

Mr. Cranston: I was wondering whether we could simply get maybe one or two answers from Mr. Tedford, so he would not have to be called back from Vista, subject to a motion to strike if the court later determines it should be stricken.

The Court: We will accommodate Mr. Tedford as much as we can without jeopardizing the record. Perhaps the best way will [757] be to tentatively hear the evidence, subject to a motion to strike. I have it clearly in mind, and I am not going to receive the matter. But inasmuch as we want to save Mr. Tedford's time, we will hear what

(Testimony of Clarence P. Tedford.)

he has to say now, subject to a later motion to strike.

Mr. Abbott: Thank you, your Honor.

Q. (By Mr. Cranston): Mr. Tedford, in your opinion, could that land be drained?

A. Very definitely, yes, I think.

Mr. Abbott: Can we identify with precision the land to which that answer was referring?

Q. (By Mr. Cranston): Is there any portion of the land owned by Mr. Sutro which could not be so drained?

A. Well, no, I think any part of it could be drained.

Of course, there would be the areas from, oh, in here somewhere (indicating), south.

Q. That is the area which has been rendered alkaline?

Mr. Abbott: I will object to that as assuming a fact not in evidence.

Q. (By Mr. Cranston, continuing): Or, in part, which needs to be drained?

A. Well, it would be the areas in here (indicating).

The Court: Where is that, Mr. Tedford?

The Witness: That would be in Field No. 11, and probably would be—to put that back into good production would [758] be not over, I suppose, maybe a half or two-thirds of that field, plus a part of this field here that is alongside of it, of the drainage.

Q. (By Mr. Cranston): Now, how long would it

(Testimony of Clarence P. Tedford.)  
take to perform that operation?

A. To put in the tile?

Mr. Abbott: May it be understood the same objection is tendered to all of these questions?

The Court: Yes, and it is received for the same reasons, with the same understanding that a motion to strike will be considered.

Mr. Cranston: Yes, your Honor.

The Witness: I don't quite get your question.  
How long—

Q. (By Mr. Cranston): About how long an operation would you estimate it would be to drain the field in that fashion?

A. Well, it would probably take a year; maybe two years. The way that would have to be done, there would have to be a pump run into a sump, and pump the water away, because you would have to get down below your water sea level here. So your drainage would have to be run to a low point here, with all the drains coming into that portion, and raising it so that it goes in the river. That is the only way to get rid of it. But we have done a lot of it by putting in dikes—putting in a tile system and throwing up dikes, and letting [759] them flood, and then pumping it out, and doing that three or four times, and then it will pretty well clear up your alkali condition. I don't think your alkali conditions are going to be too bad, too hard to correct them. But that's the only way to get rid of it that I know of, due to the lack of drainage that we have here.

(Testimony of Clarence P. Tedford.)

Q. Mr. Tedford, did you discuss this property with Mr. Sutro, about the time he purchased the property?

A. I believe it was then, I think I talked with him. I think he came into our office in regard to it. I had worked with Mr. Brown a little bit prior to Mr. Sutro's purchase, and I knew the property at the time, and I had helped Mr. Brown on little things, on his pumping, and one thing and another, and apparently Brown had mentioned my name, and Mr. Sutro called at our office, and I went over to the ranch and went over the ranch with him.

Q. I show you what purports to be a copy of a letter dated December 8, 1945, from Mr. Sutro to you, and ask you if you received the original of that letter on or about the date it bears

A. I believe I did. I think I have a copy of it in our files in the office.

Mr. Cranston: I will offer this in evidence as our next exhibit.

Mr. Abbott: I object. It is hearsay. [760]

Mr. Cranston: The only purpose is to establish the date, and that the conversations occurred at or about that time.

Mr. Abbott: I am going to object to the conversations for the same reason.

Mr. Cranston: That there was a conversation?

The Court: He testified that he had a conversation.

Mr. Abbott: Well, if it is being offered solely to establish the date of the conversation—

(Testimony of Clarence P. Tedford.)

Mr. Cranston: Yes, it is to establish that the conversation occurred at or about that time.

The Court: Then I will not read the letter. Does the date about correctly state the time?

The Witness: Yes, I believe it does, if I remember. I think we have it in our files, too.

The Court: I don't think that is admissible. The objection is sustained to the letter. The date has been fixed. I think you could read that date.

Mr. Abbott: I have no objection to the witness using it to refresh his memory as to the date.

The Court: Do you wish it marked for identification?

Mr. Cranston: Yes.

The Clerk: 34, for identification.

(The document referred to was marked Plaintiff's Exhibit No. 34 for identification.)

The Court: We didn't get your answer. [761]

The Witness: I will say that I did receive that letter, yes, on that date or very shortly thereafter.

Q. (By Mr. Cranston): Now, at or about the time Mr. Sutro bought the property, and about the time of that letter, did Mr. Sutro have a discussion with you concerning a site on the property for a dam?

Mr. Abbott: Hold your answer, please. I will object to that, your Honor, as being hearsay, with no proper foundation, and no exception applicable to such evidence.

The Court: Sustained at this time.

(Testimony of Clarence P. Tedford.)

Mr. Cranston: Your Honor, it is to establish the fact that a conversation occurred. I did not intend to go into the nature of the conversation.

Mr. Abbott: Counsel has discussed the subject matter and its general purport in his question.

The Court: I think so. That is not the proper way. This proceeding must be conducted orderly, and this is putting the cart before the horse. Sustained.

Mr. Cranston: Very well.

Q. (By Mr. Cranston): Mr. Tedford, have you made an examination of Mr. Sutro's property to determine what amount of land moving or excavation would be required in order to irrigate the property in the most advantageous manner?

A. Well, that was the reason this map was originally made, this contour map, to lay out and find out just about [762] what would be necessary to do it, and put in on an irrigation grade. At the present time, the ranch is all staked out now for grading.

Q. Then is the answer to the question yes, that you have made such an examination?

A. Yes, we have made such a survey and study.

Q. What amount of excavation per acre would be required for such purpose?

Mr. Abbott: At this point, your Honor, we will object. This is entirely irrelevant and immaterial. I assume that counsel intends to discuss costs, and there is no showing that the work which had been discussed could not have been performed economi-

(Testimony of Clarence P. Tedford.)

cally and advantageously in 1946, and used to its ultimate at that time.

Mr. Cranston: If the court please, I believe it will be the showing that in 1946 the water supply had been condemned and the land could not be used for such crops, so there would certainly be no reason to go to the expense of performing the precise leveling here involved, and the land could not be used for an indefinite period, and would be subject to erosion,

Mr. Abbott: Quite to the contrary. The evidence, including this exhibit, shows there were many purposes for which the land could be used, and that the witness recommended alfalfa, grain, and grain on the major areas. Those are the irrigated [763] crops.

The Court: I haven't read the report at all. I haven't seen it, and don't know what it contains, and I thought it had been excluded at the time of the objection.

Mr. Abbott: Only the report. But the chart and the legends contain certain matters, which contain the recommendation and/or the statements of Mr. Sutro as to the proposed use of the land. The crops there described and many other crops could be grown which would not be prohibited by Bulletin 59.

The Court: I think the order of proof should be a little different in the situation. I want to accommodate Mr. Tedford as much as the court can without prejudice to the orderly method of trial, but I

(Testimony of Clarence P. Tedford.)

think it is all anticipatory at this time, and for those reasons the objection will be sustained.

Mr. Cranston: Very well. Then I believe that would conclude my direct examination of Mr. Tedford at this time, subject to my right to recall him after I have asked Mr. Sutro certain questions.

The Court: I am not saying that you will have the right, but you have reserved the right so that you may do so.

Mr. Cranston: Yes.

### Cross-Examination

By Mr. Abbott:

Q. Mr. Tedford, you have testified you measured certain areas on the Sutro land. Was that done with a surveying crew? [764]

A. This map was made with a surveying crew. In measuring the land, it was done with a polymeter.

Q. How were the red lines done? Were they done with the aid of surveying measurements?

A. Yes. When the boys were running these different fields for their contours, they outlined them so that they are accurate so far as distance is concerned, and the polymeter is about the best way we know of establishing it. Oh, you might miss the area by a tenth, or something, but that is so trivial I don't think it makes much difference. We find the polymeter is the thing to use in general practice, in all engineering.

Q. Did you yourself put the red lines on the map, or did someone in the Soils Office do that?

(Testimony of Clarence P. Tedford.)

A. No, the engineer did.

Q. Now, will you kindly state what, in your opinion, constitutes a gradient in the subject property too steep to be suitable for irrigation?

A. Now, you are taking in a number of things. Your soil type would mean everything so far as irrigation is concerned. It would mean an awful lot. Of course, when you get up to over more than 25 per cent, why, it is a job to hold water on a hill. Of course, it would all have to be contoured. Your irrigation would have to be contoured on any of these.

Of course, any of it that is level, that would probably be [765] level enough to be flood irrigated. But fields of this type, any of this type, would have to be contoured.

Q. Let the record show the witness is pointing to the mesa area marked No. 7. Pardon me. If the reporter does not pick up these indications, it isn't in the record.

A. That would be the picture on the mesa area. They would probably run a pipeline up to it, and, of course, as Mr. Ikemi did, work their flume ditches down, and take their water up sideways.

Q. Speaking now of the mesa, in particular, and the land there, what is the maximum gradient which will permit economic irrigation of the land?

A. Well, as I say, 25 per cent is just about maximum.

Q. Well, is 25 per cent, in fact, the accurate gradient, having in mind the characteristics of the mesa and its soil, or would it be some other figure?

(Testimony of Clarence P. Tedford.)

A. Your mesa hasn't any land on it as steep as 25 per cent. That is all flatter land. That isn't over 6 or 8 per cent. Here (indicating) you have only 2 per cent, or 1 per cent. It is flat land.

The Court: That is in areas 1 and 2 you were looking at?

The Witness: Yes.

Q. (By Mr. Abbott): You have submitted a report, which is attached to Exhibit 33, for identification. Will you please state what the circumstances surrounding the preparation [766] of that report were. In other words, is that something which represents your own plan for the use of the land?

A. No. If I may, I will explain how those farm plans are made.

At the time this was made, Mr. Sutro had in mind planting alfalfa, and working it out as this was. That doesn't mean that you couldn't plant any other kind of crops in there. It was just something for him to go by, from what he had in mind at that time.

Now, three years later he may come back and revise that. We would review that as to the possibility of some other crops.

Q. But this is an available plan, or some plan of Mr. Sutro's?

A. Yes, we submitted it to Mr. Sutro, yes, in this case.

The Court: Now, let's understand that. From whom did the data come that led your organization

(Testimony of Clarence P. Tedford.)  
to make this study?

The Witness: Mr. Sutro.

The Court: You would not have made it on your own initiative?

The Witness: No, we don't go on the farm unless they request it. It is just a working agreement that we give the rancher. We try to work him out whatever he wants to have worked out, and bring out the points that possibly he should [767] know regarding the soils, the slopes, the irrigation, and things of that kind.

Q. (By Mr. Abbott): But where the report designates certain crops for certain acreages, is that data which you have secured from Mr. Sutro?

A. That he gives, that information, that he intended to use that property, those fields, for those crops at that time.

The Court: Which was along about in December of 1945?

Mr. Cranston: No, your Honor.

The Witness: No, this was in—this was, I believe, oh, in '51.

Mr. Abbott: This is dated October 16, 1951.

The Court: I am not speaking of the date of the report. I am speaking of the date when Mr. Sutro contacted you or your organization to make this study.

The Witness: Well, he had contacted us a number of times about various things; oh, reservoirs, irrigating systems, wells, and so forth, and, of course, at the time Mr. Sutro was living in San

(Testimony of Clarence P. Tedford.)

Francisco, and we would see him probably once or twice a year, so there was probably a delay of some kind.

Q. (By Mr. Abbott): In your opinion, was the plan proposed by Mr. Sutro, which you have discussed in some detail here, an economically feasible plan? A. Very definitely. [768]

Q. Now, was it a plan which made the best or something close to the best use of the land?

A. Well, you could probably—it all depends on how you want to farm. You could go into more concentrated crops, probably, and make twice as much money out of it if you figured from that angle, but with him away, and with him only here a part of the time, probably that was the best crops for him to put in at that time.

Mr. Abbott: I have no further questions.

#### Redirect Examination

By Mr. Cranston:

Q. Mr. Tedford, land upon which alfalfa can be grown may also be used for growing other crops, may it not? A. Very definitely.

Q. In your opinion, what other crops could be grown upon this property which was referred to—

A. Field 11?

Q. —on this Exhibit 33 with the indication "Truck Crops and Pasture Proposed"?

A. Well, that would—truck crops and pasture—oh, you could grow, if it was irrigated, you could

(Testimony of Clarence P. Tedford.)

grow most anything. If they did not irrigate it, you could grow possibly grain, possibly some winter vegetables. That is above frost line. You could also grow possibly a dry bean crop by getting it in early. [769]

Q. And in the area marked on this map, "Alfalfa," could other crops be grown other than alfalfa?

A. Practically any crops could be grown there. You could grow truck crops. You could grow corn, or practically any crop. That is a soil that would take any crop that would not be affected, unless a crop that would be planted in the spring and summer.

Q. Now, was this particular map, the chart, prepared in 1945 or 1946?

A. No. I believe that program was worked out—I think that was probably worked out, oh, very close to the time of that date, October, '51, or probably a little before that time.

The Court: You are referring to Exhibit 33, now, aren't you, Mr. Tedford? That is the exhibit?

The Witness: That is, yes.

Q. (By Mr. Cranston): You say that was prepared somewhere near that date?

A. Oh, somewhere near that date of approval, yes.

The Court: In 1951?

The Witness: Yes, although we had worked with Mr. Sutro a number of times prior to that.

The Court: Before you leave that subject, in

(Testimony of Clarence P. Tedford.)

order to save as much time as we can properly, do you remember when the sewage effluent was taken over the hill into the Santa [770] Margarita River?

The Witness: I remember the time, whether I can remember the date or not.

Mr. Abbott: The record shows, your Honor, if I may say——

The Witness: It is about four years ago, I think.

Mr. Abbott: July, 1952.

The Witness: Oh, was it that date?

The Court: So this study, or this memorandum, whatever it is, was made before that?

The Witness: Yes, it was. They had the sewage disposal. That was one reason they went into alfalfa there, so that they could use that water. You see, they were stopped on truck crops there by the Health Department.

Mr. Abbott: Yes.

Mr. Cranston: I have no further questions, your Honor.

#### Recross-Examination

By Mr. Abbott:

Q. A moment ago, in response to Mr. Cranston's questions, you named a few crops which could be grown on the area marked with the roman numeral 2 on the map which is marked Exhibit 33, for identification. Could that also be used to grow flowers?

A. Yes.

Q. Was it suitable for that purpose?

(Testimony of Clarence P. Tedford.)

Tedford, and I will assure you the court will assist you as much as it can. It cannot control the way they ask questions.

Mr. Cranston: Your Honor, I would like at the present time to call Mr. Sutro to ask him certain questions in order, if possible, to allow any further questions which would be asked of Mr. Tedford to be asked today, and then I would like to reserve the right to again recall Mr. Sutro at a later time on matters which will not bear upon Mr. Tedford's testimony; in other words, introducing a part of his testimony now, and a part later, if that is acceptable to the court and counsel.

Mr. Abbott: I have no objection, if that will assist.

The Court: If that will facilitate and properly expedite the case, of course, I would desire it be done, and if it does not, I desire that it be not done.

Mr. Cranston: If I waited to examine Mr. Sutro upon every [774] phase, it would not be possible for Mr. Tedford to testify again today. In order to have him testify today, I would have to ask Mr. Sutro only certain questions.

The Court: With the understanding that is not the procedure to be followed throughout the case, but only with respect to the matters that Mr. Tedford will testify to, that will be satisfactory.

Mr. Cranston: Yes.

The Court: Yes.

(Witness temporarily excused.)

Mr. Cranston: Then I will call Mr. Sutro to the stand.

The Court: He has been sworn before.

### ADOLPH G. SUTRO

recalled as a witness by and in his own behalf, having been heretofore duly sworn, was examined and testified as follows:

The Court: You were sworn in San Diego, I think, twice, weren't you, Mr. Sutro?

The Witness: I don't recall the second time, your Honor. I was sworn.

### Direct Examination

By Mr. Cranston:

Q. Mr. Sutro, you purchased the property in question at what time? [775]

A. The deed to the first parcel was recorded January 17, 1946. The deed to the second parcel, the time of record appears in the transcript, but I do not have it in memory. I don't have it in my mind.

Q. Was it in the early part of 1946?

A. I believe it was February, 1946.

Q. At or about the time that you purchased the property, did you consult with the Soil Conservation Office? A. Yes.

Q. At that time did you consult with Mr. Tedford in that office? A. Yes.

Q. What points did you discuss with Mr. Tedford at that time?

Mr. Abbott: I will object, your Honor, as being

(Testimony of Clarence P. Tedford.)

hearsay evidence and no proper foundation.

The Court: I think the foundation has been pretty well laid. I don't think that is hearsay. Overruled.

The Witness: Various conditions pertaining to the ranch, including the location of a desirable damsite.

Q. (By Mr. Cranston): Did Mr. Tedford at that time offer you assistance in determining the location of such a damsite?

A. Yes. The situation, as it existed at the time of my purchase of the ranch, was that we were not officially in the Soil Conservation District. It happened that the area of [776] the district ended at the borderline of my ranch, but Mr. Tedford was kind enough to assist us, even though we were not within the boundary.

Q. Did you discuss with Mr. Tedford at that time the location of any other irrigation facilities?

Mr. Abbott: Your Honor, we object, not only because this is hearsay, but also because it appears to have but one purpose, and that is to introduce evidence relative to increased costs of certain agricultural installations—I am sure that is counsel's purpose—and with respect to evidence of that type which may encompass many particulars in this trial, we have several objections to delineate to the court.

First, such evidence is highly speculative and is wholly without precedent in the law by counsel's own statements in this court. Such evidence with-

(Testimony of Adolph G. Sutro.)

respect to the particular type of installation now under inquiry is obviously immaterial for the further reason that there has been no showing, and presumably in the light of the evidence prior to this time, there can be no showing that the installations and improvements contemplated were not equally desirable for the land, subject to whatever limitations on the water existed at the time of the purchase of the property. Certainly, these lands were equally suitable for alfalfa, for vegetables grown for seed or for flowers, or for any other purpose the land could [777] be used for. For all of those reasons we think the evidence is objectionable.

The further speculativeness of the nature of the evidence is demonstrated by the theory of the plaintiff that as a result of this situation he was deprived of the buying power of the dollar, so that when he later bought, he could not buy at the same price. There is no showing that money used for this purpose was not invested in some other investment which gave him an equal return, such as he would have received from strawberries, or other crops which would be of equal value. There are so many speculative aspects to this question that we submit it could not be received on the measure of damages suffered by the plaintiff in this action.

The Court: The court has already ruled upon some of the aspects of this evidence. That all goes, in my judgment, to the weight of the evidence, and not to its admissibility. I do not mean by that to say that a person, even under a most liberal view

(Testimony of Adolph G. Sutro.)

of the Federal Tort Claims Act, can say, "Well, I wanted to do this, and I was prevented from doing it, and I could only do that."

That, in my judgment, would bring into the law an uncertainty that would not establish any standard at all. There would be no standard of estimating damages under the Federal Tort Claims cases if that were the rule. But it is still a matter that goes to the weight of the evidence, I think, and [778] your objection has been adverted to during the argument, and the court has made a ruling on it. I think we will adhere to that ruling. The objection is overruled.

Mr. Cranston: Will you read the last question, Madam Reporter?

Mr. Abbott: So that we may not be repeatedly interrupting, your Honor, may it be understood that the objection to competency, relevancy, and materiality of all this evidence relative to building costs is tendered by the government?

The Court: It may be understood that the same objection has been made, and without making it again in extenso, it is also understood that the same ruling is made that has been announced by the court, that it is a question of the weight of the evidence, and not its admissibility.

Mr. Abbott: Thank you, your Honor.

(The question referred to was read.)

The Witness: I may have discussed with him the

(Testimony of Adolph G. Sutro.)

location of a diversion works on the creek. In fact, I think I did.

Q. (By Mr. Cranston): Did you discuss with him the location of a reservoir?

A. Yes, that was the purpose of the damsite, to form a reservoir.

Q. Can you explain that, Mr. Sutro?

A. May I illustrate it on the map? [779]

Q. Yes.

A. The object was to impound the greatest amount of water at the lowest possible cost. The most suitable place on the ranch was in this area here (indicating), with a dam across the narrowest point.

Q. Mr. Sutro, may the record show that you are indicating an area to the right of the field marked No. 5 on Exhibit 32, on a line that you indicated was apparently about even with contour—which contour mark there?

A. My recollection is the 75 foot contour.

Q. And the dam would be located where?

A. On that contour, directly across this place (indicating).

Q. Now, what about the reservoir site that you discussed with him?

A. There was a small day reservoir proposed at a location near the top of the mesa.

Q. And when you say "the mesa," you are referring to? A. To Field No. 7.

Q. Now, you discussed those features with Mr. Tedford shortly after you purchased the property;

(Testimony of Adolph G. Sutro.)

is that correct? A. Yes.

Q. Going back prior to the time that you purchased the property, I believe you stated at the former hearing that you had examined properties in various portions of California? [780]

A. Yes.

Q. And you made that investigation over a considerable period of time? A. Yes.

Q. What steps had you taken to ascertain what properties might be considered by you?

A. Among other steps, I had written the various county farm advisors in different counties asking them in regard to quality of soil, availability of water, and climatic conditions.

Q. At that time were you interested in ascertaining whether the property was or was not within the boundaries of an irrigation district?

A. My letters specifically asked regarding property which was not included within the bounds of an irrigation district.

Q. Why were you interested in that question?

Mr. Abbott: Really, your Honor, isn't this going rather far afield, when we inquire into the plaintiff's mental processes in selecting this property?

The Court: Yes, I think that question is objectionable. Sustained.

Q. (By Mr. Cranston): Were you interested, Mr. Sutro, in finding land which could be irrigated with a minimum cost? [781] A. Yes.

Q. Did you have in mind at the time you pur-

(Testimony of Adolph G. Sutro.)

chased any general method to be used in irrigating the property that you purchased? A. Yes.

Q. What system was that?

Mr. Abbott: Well, your Honor, I don't like to keep interrupting, but once again we are going into the discussion of the mental process of the person selecting the property. We assume he liked the property or he would not have purchased it.

Mr. Cranston: My purpose, if I may say, was that at the time Mr. Sutro purchased he had certain definite thoughts in mind; that he took action immediately to carry out his intentions and that the activities of the United States prevented him from doing what he had had in mind. The purpose is to establish that this is no afterthought, but that it was intended at the time of the purchase, and that he was prevented by the government's acts. I know of no other way in this particular matter than by examining Mr. Sutro as to what he did have in mind, and he can support it by certain documents.

The Court. He has already testified to what he had in mind in San Diego over a considerable period of time.

Mr. Cranston: Not as to the details of the system to be [782] installed, which is what this goes to; in other words, to the elements of the irrigation system which he would install, consisting of a dam, a reservoir, pipes of certain sizes, capacities, and so forth.

Mr. Abbott: Your Honor, this very problem points up the difficulties we encounter in measuring

(Testimony of Adolph G. Sutro.)

damages in this manner. Mr. Sutro may testify that he intended to reconstruct Sutro Baths in this area, and we have no way of gauging that evidence or of testing it.

The Court: Of course, if he made any such statement, the court would know sufficient about the location of the property to disregard it. I do not want to foreclose the plaintiff from eliciting any proper subject matter that is capable of cross-examination, but it seems to me that we are getting into the realm of mental operations as to which, without the power of divination—and I don't believe even government counsel has that power—we cannot ascertain anything concerning it which would be of evidential value in the case.

Mr. Cranston: Well, your Honor, I believe we have certain documentary evidence which will substantiate Mr. Sutro's statements.

The Court: Then let's get at that.

Mr. Cranston: But they could only be introduced, I take it, to support a statement which has been made, and also the [783] testimony of Mr. Tedford, which I believe will substantiate certain portions, which, as I understand it, your Honor has stated can come in only after Mr. Sutro has given his testimony.

The Court: That is correct. But the court has not indicated that it is going to permit the narration by Mr. Sutro of his mental processes, which are not capable of cross-examination. If there are

(Testimony of Adolph G. Sutro.)

exhibits, or if there be writings or memorials, as there is one here before the court—if there be others, they can be produced, and the court can look at them, and your opponent can cross-examine about them.

Mr. Cranston: Yes.

The Court: But Mr. Sutro's own mental processes, however praiseworthy they may have been, and however learned they may have been, are not within the scope of that ruling.

Mr. Cranston: I believe that during the noon recess I can produce and have available at 2:00 o'clock those documents, and I will introduce those first, then, instead of asking certain general questions, if that is agreeable.

The Court: Very well. It is about the hour of recess anyhow. We will take our recess until 2:00 o'clock, gentlemen.

(Whereupon, at 12:00 o'clock noon, a recess was taken to 2:00 o'clock p.m., of the same date.) [784]

Monday, March 1, 1954, 2:00 P.M.

The Court: Proceed, gentlemen.

### ADOLPH G. SUTRO

the plaintiff herein, resumed the stand and having been previously duly sworn, testified further as follows:

(Testimony of Adolph G. Sutro.)

Direct Examination  
(Continued)

Mr. Cranston: Your Honor, I had intended this morning to endeavor to ask Mr. Sutro a few questions rather briefly preparatory to recalling Mr. Tedford, but the objection which Mr. Abbott has raised and your Honor's remarks have made it apparent, I believe, that I should ask your Honor for permission to go into Mr. Sutro's background a little in order to lay a better foundation for these questions.

I think also that we should consider the fundamental purpose of the Tort Claims Act, and exactly the damages to which we are entitled, and also the rules of law relating to the admission of evidence as to intent.

I shall try to be extremely brief on this, but it is an important question for the plaintiff, and I would like the opportunity to present my remarks, as I say, as briefly as possible on that point.

First, the Federal Tort Claims Act provides that the United States shall be liable respecting the provisions of this Title relating to tort claims in the same manner and to [785] the same extent as a private individual, and the measure of damages, as set forth in the California Civil Code, Section 33.33, for the breach of an obligation not arising from contract, the measure of damages except where otherwise expressly provided by this Code is the amount which will compensate for all the detriments proximate

(Testimony of Adolph G. Sutro.)

mately caused thereby, whether it could have been anticipated or not.

Mr. Abbott: If I may interrupt just a moment. Your Honor, will the defense be given the same opportunity at this time to argue the question relative to damages?

The Court: No, I am not going to listen to much argument because I have been over this twice now in this case.

Mr. Cranston: This is merely the preamble, your Honor.

Mr. Abbott: I have no objection, your Honor, to going into this once again, if we are afforded the same opportunity. We have some serious questions of law relative to the measure of damages which we would like to further discuss.

The Court: I am going to listen to both of you at the conclusion of the evidence, but not interspersing the evidence with argument each time counsel thinks the court has ruled in a way which he does not agree with, and that he thinks he can persuade the court that the court is wrong. Now, maybe you can do that at the conclusion of the evidence.

Mr. Cranston: Well, the only purpose of reading that, your Honor, was to point to this fact, and that is the only [786] law I am going to read on the question of damages; that it is the detriment caused to the individual, that is, the loss to Mr. Sutro, not necessarily to an average man. That is the extent of the legal argument on that point.

Now, we have here, I believe, addressing myself

(Testimony of Adolph G. Sutro.)

now to the admissibility of the evidence, an example again of what was referred to by Mr. Sutro in Exhibit 24 in evidence, in the letter which he had written to me, a copy of which I sent to Mr. Deutz, in which he said that he was—I quote from the exhibit:

“quite willing to do anything I possibly can to mitigate damages,”—this is found in the transcript at page 357—“but this particular situation has me in a quandary. I don’t know what to do, and as I said in the beginning of this letter, anything we do do, the Government will claim is wrong.

“If I install a complete irrigation system for the entire ranch and am then not allowed to use it due to polluted water, the Government will claim we are trying to build up damages. If I do not install it, they will claim I did not try to mitigate damages.”

And now, of course, they are claiming that since he did not install it, that he never at any time intended to [787] install it, and that he will not be permitted even to testify as to what his intention was. Then he says:

“If the pollution is removed but the Government is correct in its contention that it can discharge its sewage any place the spirit moves it \* \* \* I am again not warranted in constructing a complete system. Until their ‘discretionary act’ claim is cleared up in court, I do not think I dare make a move.”

\* \* \* \* The sound, sensible, efficient way to irrigate the ranch is to design at one time and as a unit

(Testimony of Adolph G. Sutro.)

the entire installation. I know of no other way to get an economic, fully integrated and easily maintained plant. But as it is, the Government has me feeling like a rabbit being chased by a dog," and so forth.

" \* \* \* If I do it, the Government will deny liability for expense incurred. If I don't, they will claim I should have."

And now we see an example. They say he should have installed the system.

And then he says he wants to know if we can get an agreement out of the Government not—to cease the flow of the effluent, so that he can try to adopt the expedient of using the land for alfalfa temporarily until it can be used for the [788] celery crops.

Now, a couple of authorities on the question of intention. As I understood the remarks of Mr. Abbott this morning, the objection was raised that if Mr. Sutro testifies as to his intention, there is no feasible way of cross-examining him.

I submit, your Honor, that the authorities are well settled that a witness is permitted to testify to his intention when that intention is a material factor in the case. I have two authorities here to which I will refer if your Honor is in any doubt on that point.

The Court: No, I am not in any doubt on that point. The point I am in doubt on is this: That if all you have is the intention—let's take a simple case, and I think it will illustrate it, a simple tort

(Testimony of Adolph G. Sutro.)

case of a personal injury a man sustains a broken leg, and he thinks that he ought to go to a doctor, and he goes to a doctor, and the doctor doesn't do the work that should be done, that he should have gone to another orthopedic surgeon, and in his law-suit he says, "I wanted to go to Dr. John Brown, this eminent orthopedist down here, but instead of that I went to Dr. John Smith, but my intention was to go to Dr. Brown, and if I had gone there I am confident my leg would have been repaired, it would not have been in the condition it is now, and therefore, I think that I should be entitled to additional compensation, [789] additional damages, because of the detriment that I have suffered."

I think that is a pretty parallel case. It seems to me that it is completely out of line with any standard which you could adopt.

Now, then, I am talking about the intention, and that is all I am talking about.

Mr. Cranston: Well, we have—

The Court: If there is nothing further in the case than the mere mental concept, the intention of someone to do something, and nothing in furtherance of the execution or the carrying out of that intent—

Mr. Cranston: Well, we do have certain correspondence which indicates the carrying out of that intent, and also, your Honor, I would like, as I have said, permission to go into certain events which occurred even before the purchase of the property, which I believe further substantiate the intention

(Testimony of Adolph G. Sutro.)

and show the background, the general state of mind of Mr. Sutro, and indicate why he was interested in these matters.

What we are trying to establish, as I have indicated, is that a certain irrigation system would have been installed. Now, it was not installed because of the acts of the defendant.

I believe that we are entitled to examine Mr. Sutro as [790] to his correspondence, and as to the background to that correspondence, because without the background the correspondence is not intelligible.

The Court: There was a lot of evidence produced, and it is in the record, voluminous correspondence with officers of the Navy.

Mr. Cranston: Well, this is—

The Court: One very striking letter that I remember was from Assistant Secretary Kimball, which was a very illuminating letter. What I am trying to say is the court is limiting the production of evidence, even on intention, to intention that resulted in something in furtherance of that intention. Otherwise it is just simply taking up time, because the court has already expressed itself now that he had a dual intention in going down and acquiring this property.

How are we going to segregate the intention with respect to the pecuniary aspect, and that is what you are talking about, the money aspect.

Mr. Cranston: Yes, that is what I am talking about.

(Testimony of Adolph G. Sutro.)

The Court: How are you going to separate that in court from the, shall I say, sentimental aspects of the case? Probably it wasn't pure sentiment. It was the desire to provide a suitable home for his mother and himself. He was a bachelor and lived with his mother, apparently. That is the inference that is deductible from the facts. [791]

He went down there. There was a beautiful site near a very beautiful town in his State, and he selected that as a place where his mother and himself could have a home that would be pleasurable and also profitable. But how are you going to separate the pecuniary, the money aspect of it, from the sentimental aspect of it?

Mr. Cranston: Well, I believe, your Honor, if I might be permitted to ask the questions which I intend to that they all relate to the pecuniary angle, not to the sentimental angle, and I think that I can tie them up with the correspondence. But to make the correspondence really effective, I must ask a few preliminary questions as to Mr. Sutro's not sentimental background in any way, but his actual business and economic background.

The Court: Haven't we a good deal of that in the record already?

Mr. Cranston: This is in addition to what is in the record, and a wholly separate line. It will not be repetitious of any testimony in the record.

The Court: As long as you don't go into the record again, the same record that we have. He narrated his experience, and told about the Sutro Baths,

(Testimony of Adolph G. Sutro.)

and the conduct of those, and that he had acquired the knowledge of analyzing water, and you introduced evidence as to the correspondence with the naval people, introduced the Deutz letter [792] asking the Department of Justice for some kind of a settlement. All of that is in the court's mind.

Mr. Cranston: But this is wholly separate from that.

The Court: All right. Let's see what it is.

Mr. Abbott: May I be heard briefly on this point which counsel has been discussing, your Honor?

The Government suggests here that we are interjecting a personal element that is entirely foreign to the law of measuring damages for the destruction or diminution of value of real or personal property.

The only question which the court is now trying, as the Government views it, is the question of how has the fee value or the annual rental value of this property been reduced by reason of the tortious conduct of the defendant, as found in the earlier trial. Can it be said that if Mr. Sutro owned the land at the time of the damage that the amount of recovery should be one figure, but that if Mr. Ikemi or Mr. Brown owned it the recovery should be another? I think that that is something entirely foreign to the law of damages. All we are considering now is the diminution in annual rental value which actually comprehends all of these collateral things we talk about.

If there was a good reason why these structures

(Testimony of Adolph G. Sutro.)

could not have been erected, and I question that there was, but if such a reason existed, then that will be reflected in the [793] diminution of the annual rental value, because the tenant would know there was a certain limitation on what he could use and what he could build.

But to say that if Mr. Sutro comprehended a certain use, and if someone else did not, that there must be a difference in the measure of damages suffered is something which is wholly unprecedented, nor does counsel cite any authorities in support of it.

The Court: I will hear some, and see how far it leads. I am not going to permit too much latitude on it.

Mr. Abbott: Then in order to save time, may it be understood, your Honor, that we are objecting to all of the evidence relative to the plaintiff's state of mind, intention and plans at the time that he purchased the property or shortly thereafter. I don't want to be jumping up.

The Court: It may be understood, and that the court has ruled upon that objection in the same manner that it stated this morning.

Mr. Abbott: Thank you, your Honor.

By Mr. Cranston:

Q. Mr. Sutro, when were you born?

A. I am told I was born October 25, 1891.

Q. Are you an engineer? A. No.

Q. Have you had mechanical experience? [794]

(Testimony of Adolph G. Sutro.)

A. Yes.

Q. Did you design a rowboat? A. Yes.

Q. How old were you? A. Eleven.

Q. Did you take a contract to assemble tilting containers for drinking water containers?

A. Yes.

Q. How old were you then? A. About 15.

Q. Have you built a motorboat? A. Yes.

Q. How old were you then? A. About 16.

Q. Have you run a construction locomotive on a railroad? A. Yes.

Q. Had you had previous experience in operating the locomotive? A. No.

Q. Where did you obtain your experience in operation?

A. I went to the Chicago Public Library and studied up on steam engines and boilers for about three days, from the time the library opened until it closed at night. Then I went down to the Illinois Central freight yard and was [795] able to sell an engineer on a switch engine the idea of letting me ride around with him for about one-half a day, which he did, and I picked up enough knowledge to get by on the construction locomotive job.

Q. Were you ever employed by the Wright Brothers of airplane fame? A. Yes.

Q. In what connection?

A. I was employed in the Wright Brothers factory in Dayton, Ohio, in the wing covering department.

(Testimony of Adolph G. Sutro.)

Q. Did you do other work for them?

A. Yes. I became a road mechanic.

Q. And how old were you at that time?

A. In the neighborhood of 18. It is quite a few years ago.

Q. Did you ever engage in airplane racing?

A. Well, yes. On the first transcontinental airplane racing, which took place around in 1910 or 1911, I was master mechanic.

Q. Did you ever design an airplane?

A. I did.

Q. Was the plane built? A. Yes.

Q. Who built it? A. I did. [796]

Q. Personally? A. Yes.

Q. Was this design approved by professional airplane designers? A. No.

Q. What were their objections?

A. The principal objections were that the plane would never leave the ground. If it did, it would fall to pieces in the air. I thought any other objections were redundant.

Q. Did you proceed to build the plane?

A. Yes.

Q. What happened?

A. I had—I was very young—I thought I might build a better plane than had ever been built before. I—shall I stop for a minute, your Honor, until he returns?

I thought I might build a better plane than had ever been built before, and that the best way to

(Testimony of Adolph G. Sutro.)

prove it would be to see if I could break some of the existing records.

Q. Did you make any stress analyses at that time?

A. Yes. I believe it was the first stress analysis ever made on an airplane.

Q. Did this plane perform as you had expected?

A. Yes.

Q. What did it do?

A. It made practically a clean sweep of every record [797] in its class.

Q. Can that be verified from any source?

A. Yes, in the National Museum of the United States. It is in their archives.

Q. And have you personally seen the archives?

A. I have seen the archives of the Smithsonian Institution.

Q. Did the United States Navy ever use planes which incorporated some of the features of your design? A. Yes.

Q. What features?

A. A method of allowing a seaplane to leave the water more rapidly than current designs.

Q. Who flew this airplane when the world's records were broken? A. I did.

Q. Who holds License No. 1 for land planes in the United States.

A. I believe, if my memory is correct, it is held by Glenn Curtiss.

Q. I show you a document, and ask you if this was issued to you. A. It was.

(Testimony of Adolph G. Sutro.)

Q. And what is that?

A. That is the first seaplane license issued. [798]

(Counsel referring to another document.)

A. Oh, that is just an annual certificate.

Q. Did you give up flying afterwards?

A. I did.

Q. Why?

A. The income was not commensurate with the hazard.

Q. You were in the aviation business for what purpose?

A. For the purpose of making a profit.

Q. What did you do then? What business did you enter during the 1920's?

A. I was in the construction business.

The Court: Just a minute, please. I did not get that.

The Witness: I was in the construction business.

Q. Did you build a house trailer? A. Yes.

Q. Had other house trailers then been built?

A. Not to my knowledge.

Q. Was that a commercial venture?

A. No.

Q. Did you thereafter design and supervise the construction of a swimming plunge, a co-efficient system? A. I did.

Q. Did that differ from previously accepted principles of construction? A. It did. [799]

Q. And was it a success?

A. It was, and is in use today.

(Testimony of Adolph G. Sutro.)

Q. Did you personally design the instruments to govern the operation of this filter?

A. I did.

Q. Did you personally design the chlorinator in this system? A. I did.

Q. Is it in use now? A. It is.

Q. Did you design a commercial ice skating rink?

A. Yes, with the exception of the installation of the refrigeration machinery. I have had no experience in refrigeration.

Q. Did you do certain work in 1933 before the United States Navy or in connection with work with the United States Navy dealing with stuffing boxes or glands?

A. That was in 1943, during the war, and—may I ask you to repeat your question?

Q. Did you do any work in connection with the United States Navy or aroused by the United States Navy in connection with stuffing boxes or glands? A. Yes.

Q. What was that work?

A. I was told by some friends, who had some connection [800] with a war contract, that the Navy was having some trouble in operating the controls on instruments which were submerged to a considerable depth; that if they made the glands or stuffing boxes on the shaft tight enough to prevent leakage, they had difficulty in turning the shaft, while if they loosened the glands, they then had

(Testimony of Adolph G. Sutro.)

difficulty with leakage entering the instrument and ruining it.

Q. What did you do?

A. I was able to suggest a device which, for all practical purposes, was absolutely water-tight and absolutely frictionless.

Q. Where did you produce this device?

A. I made a model in my shop at home.

Q. Was this ever used by the Government?

A. It was used on some instruments owned by the United States Navy.

Q. Did you build a trailer to haul supplies to your ranch when you should purchase one?

A. I did.

Q. When was this?

A. Prior to 1945. I would estimate around '43 or '44.

The Court: I would like to have the last two questions read.

(The questions and answers referred to were read.)

The Court: I want to ask you a question there so as to [801] save the court's time properly. Did you at that time have in mind the purchase of this property that is in question here?

The Witness: No, your Honor. I had in mind at that time the purchase of a ranch.

The Court: No, I asked you a specific question.

The Witness: Yes. Not the specific piece.

Q. (By Mr. Cranston): Were there any special

(Testimony of Adolph G. Sutro.)

problems in connection with the braking power of this trailer?

A. Yes. I wished to haul it behind a passenger car at comparatively high speed without having to put brake operating equipment on the passenger car, because I did not know which particular car would be used as a tow car.

Q. What did you do?

A. I developed an automatic brake, which the momentum of the trailer behind the car applies on the trailer wheels when the car ahead is slowed down.

Q. Did that work successfully? A. It did.

Q. Is the trailer still in use?

A. The trailer is falling to pieces in a cow pasture of the neighboring dairy. I have no place to store it.

Q. About the time, in 1946, after your purchase of the property, did you design a mechanism in connection with the irrigation of fields?

A. Yes. [802]

Q. Can you describe this mechanism?

A. This was an automatic valve designed to go on the irrigation system on the ranch. The feature of the valve was that when an irrigation check had been irrigated, the valve would shut off automatically, and open the next valve on the line, and that this process could have been kept up until the entire field would be irrigated, without any human attention.

Q. Did you manufacture any of these valves?

(Testimony of Adolph G. Sutro.)

A. Yes. A pair of them were manufactured for test purposes, with the intention of taking them down to the ranch and trying them out.

Mr. Abbott: I will object to that, your Honor, or, rather, move to strike the answer which last came in, which I believe is inconsistent with the Court's ruling made, namely, that it reflects the subjective intention of the witness not manifested by any documents or other—

The Witness: There is nothing subjective about that.

The Court: Mr. Sutro, you let the lawyers do the arguing. They are very well prepared to argue the case.

The Witness: I apologize, your Honor.

The Court: What was done with this instrumentality? Was anything done with it effectually at all?

The Witness: No, we put it in storage until such time as we could get the pipelines in. That is why we made it, to use it. We were unable— [803]

The Court: But you never did use it, or attempt to use it?

The Witness: We had no pipelines.

The Court: Will you answer my question?

The Witness: No, your Honor.

The Court: The objection will be overruled.

Q. (By Mr. Cranston): Mr. Sutro, returning to the period before you bought the ranch, did you design and build a water softener to take care of laundry and boiler equipment? A. I did.

(Testimony of Adolph G. Sutro.)

Q. What did you use as a regenerating agent?

A. Salt water from the ocean.

Q. Was that in accordance with accepted practice? A. No. I was told it could not be done.

Q. Did it work? A. It did.

Q. Is it accepted practice at the present time?

A. I understand that it is.

Mr. Cranston: Bearing in mind your Honor's ruling with reference to testimony with respect to the Sutro Baths, I have two questions which do not duplicate anything already in the record on that.

The Court: Very well. Propound them.

Q. (By Mr. Cranston): You did own the Sutro Baths and the ice rink at one time? [804]

A. Yes.

Q. During any period of time did you personally maintain and repair all the precision instruments in those baths?

A. From a few—oh, I would say from about a year after the outbreak of World War II until I sold the property, I personally maintained the meters and regulating devices and similar types of instruments.

Q. And did you maintain, personally maintain the heavy machinery during any part of this period?

A. Yes, during a part of the period. Mechanics were few and far between, and mechanics familiar with heavy machinery were practically non-existent, so on some of that, particularly during periods

(Testimony of Adolph G. Sutro.)

when we had a breakdown, I personally maintained the machinery.

Q. Now, Mr. Sutro, at the time you bought the Brown property, was any part of it covered by any type of irrigation system? A. Yes.

Q. Can you describe in general the system that was then on the property?

A. Yes. Mr. Ikemi—you asked me about Mr. Brown. Excuse me. Mr. Brown, I have been told, had taken Ikemi's gas engine driven pump, and had had a 25 horsepower motor mounted on it. Otherwise I understood the system was the same as had been used by Ikemi. [805]

Briefly, it consisted of 10-inch and 8-inch steel pipe, running from the pump to the mesa and the small mesa reservoir. From there a concrete line went part-way up the mesa. Coming back to the pump there was a by-pass whereby instead of pumping up to the mesa, he could pump in a pipeline down to a valve, or valves, in several of the lower fields.

Then, of course—you asked me about the system which was in effect when I purchased the ranch?

Q. That was the last question.

A. That is all.

Q. Did you believe that—did you intend to maintain this system? A. No.

Mr. Abbott: Objection. May the answer be stricken for the purpose of the objection?

The Court: Yes, for the purpose of the objection.

(Testimony of Adolph G. Sutro.)

Mr. Abbott: Your Honor, I don't want to be repetitious about this, but this question once again is objectionable, not only for the reasons stated in our argument, which the court has ruled against, but also objectionable in view of the court's own ruling with respect to subjective evidence on intention. For both of those reasons we object to it.

Mr. Cranston: If the Court please, I wish now to proceed to some letters to show what he did about it. I think I must lay some foundation for [806] that.

The Court: Oh, well, overruled. Let's get right to the substantial part of the evidence.

Mr. Cranston: Yes.

Q. (By Mr. Cranston): Did you write any letters to any pump companies in connection with pumps?

A. Yes. Immediately upon purchase of the ranch, or, rather, immediately upon payment of the deposit on the ranch and before the deed was on record, I wrote regarding the Peerless pump which was in the well, to its manufacturer, to find out about the output of the pump.

Q. On what day did you write to the Peerless Pump? A. December 12, 1945.

Mr. Cranston: Mr. Abbott, would you like to see the document?

Mr. Abbott: Why, yes, so long as he is testifying from the document, I would like to see it.

(The document was handed to counsel.)

Mr. Cranston: If the Court please, I will offer

(Testimony of Adolph G. Sutro.)

in evidence this letter, which the witness has testified was a copy of a letter sent by him to the Food Machinery Company as our next exhibit in order, the letter of December 12, 1945.

Mr. Abbott: It is objected to upon the following grounds: first, as hearsay, and not subject to any exception, and without any proper foundation. Secondly, the letter does not do what counsel states that it will do. It does not establish [807] any intention about any purchase of any equipment. It is a letter inquiring as to the characteristics of a pump on the property at the time it was purchased.

Mr. Cranston: May I then, your Honor, inquire of the witness as to the intention with which the letter was written?

Mr. Abbott: Hold your answer, please. We object to any such question, your Honor. When they take a meaningless letter, or letter which has no bearing on the point under consideration, and introduce oral evidence to attempt to establish an intention consistent with plaintiff's contention, they do no more than when they introduce oral evidence unassisted by any document. There is nothing here to bear out the statement.

The Court: Perhaps I had better look at the proffer.

(The document was handed to the Court.)

The Court: Now, what is before the Court, Mrs. Zellner?

(The record was read.)

(Testimony of Adolph G. Sutro.)

The Court: Let it be received and marked filed as the next exhibit.

The Clerk: That will be Plaintiff's Exhibit 35 into evidence.

(The document referred to was marked Plaintiff's Exhibit No. 35 and was received in evidence.)

Q. (By Mr. Cranston): Did you receive a reply to this letter, Mr. Sutro? [808]

A. Yes, Mr. Cranston.

Q. Do you have it before you?

A. Yes, Mr. Cranston. This is the letter. (Handing document to counsel.)

Mr. Cranston: I will offer that as our next exhibit, your Honor.

Mr. Abbott: To which the defendant objects on the ground that the letter is hearsay, not within any exception to the hearsay rule, and that no foundation for it has been laid. On the further ground that the evidence has no bearing on the particular matter under discussion, and purports to furnish information relative to an existing pump on the property. I fail to see its materiality.

The Court: If you are going to read the letter, you read the letter. If you are going to let the Court read it, you had better let the Court read it, instead of stating what it is.

(The document was handed to the Court.)

The Court: About all the letter says is that they

(Testimony of Adolph G. Sutro.)

cannot give him the information, and refer it to the Los Angeles office. Isn't that it?

Mr. Cranston: That is what the letter says. The purpose is to indicate Mr. Sutro was endeavoring to design a system at this time. In addition to his present testimony this indicates actual activity on his part in that connection, [809] which is what counsel for the Government seems to desire.

The Court: The letter will be received and filed.

The Clerk: That will be Plaintiff's Exhibit 36 in evidence.

(The letter referred to was marked Plaintiff's Exhibit No. 36 and received in evidence.)

The Court: Why don't you show him all of the correspondence, and identify it, and then if you are going to offer it, offer it all, instead of doing it piecemeal.

Mr. Cranston: Very well, your Honor.

Q. (By Mr. Cranston): I will show you another letter from you, a copy of a letter, that is, from you to the Food Machinery Corporation, dated January 26, and ask you if that is a copy of a letter which you sent to the Food Machinery Corporation.

A. Yes.

Q. I show you a copy of a letter from you directed to General Joseph Fegan, Carlsbad Hotel, Carlsbad, California, and ask you if that is a copy of the letter which you sent to General Fegan.

Mr. Abbott: Before the witness answers, I would

(Testimony of Adolph G. Sutro.)

like an opportunity to inspect that particular letter, which I haven't seen.

Mr. Cranston: Yes. [810]

The Court: You might show counsel all of these letters, so that he can read them.

Mr. Cranston: Yes.

Mr. Abbott: If these were made available during the recess, we might be able to speed up the trial.

(The documents referred to were handed to counsel.)

Q. (By Mr. Cranston): Returning to this letter of February 4th, will you state who General Joseph Fegan was?

A. General Joseph Fegan until a few days before had been the commanding general at Camp Pendleton, California.

Q. In this letter, Mr. Sutro, did you state:

"Between trying to design a new home, a barn, an implement shed, a house for the help, a storage shed, figure out the piping for the irrigation system, the layout of the fields, the type of crops to grow, and a few other things as well as trying to lick the problem of construction mechanics and building materials, I have been, to put it mildly, not exactly idle since my return"?

Mr. Abbott: Objection. The letter is the best evidence of its contents, if introduced.

The Court: Sustained.

Q. (By Mr. Cranston): I will show you the letter dated March 28, 1946, from you directed to

(Testimony of Adolph G. Sutro.)

“Dear Wheaton.” Will you state who Mr. Wheaton was? [811]

A. That is Colonel Wheaton A. Brewer, who is advertising director of the Pacific Rural Press, which is the name of the magazine or was at that time. It is now known as the California Farmer.

Q. And I show you what purports to be a copy of a letter from you directed to “My Dear Professor,” with certain writing in pencil at the top. Can you state to whom this letter was directed?

A. That was sent to Professor Frederick Griffin, dean of the farm university students at the University of California at Davis.

Q. And I show you what purports to be an original letter addressed to yourself from Mr. Pierce Coobms, dated November 13, 1946. Was there enclosed with this last named letter a copy of the rules and regulations referred to in the letter?

A. Yes.

Mr. Cranston: If the court please, at this time I would offer in evidence the letters which have been referred to by the witness.

In connection with the letter of February 4th, I believe the first paragraph is the only part which is material. I would suggest that only that portion be introduced, although if counsel wishes the rest of it, I have no objection.

In connection with the letter of March 28th, I believe [812] only the first two paragraphs are material.

In connection with the letter of September 22nd,

(Testimony of Adolph G. Sutro.)

I believe that only the first three paragraphs on the second page have any materiality.

The other letters I would introduce in their entirety.

If Mr. Abbott wishes to have the rest of the other letters introduced, after he has examined them more fully, I would have no objection. My only thought is they would clutter the record.

Mr. Abbott: First, we will object to the entire offer on the ground it is incompetent and immaterial. There has been no occasion shown for measuring damages by the method which counsel suggests. Further, that the evidence is hearsay, that no proper foundation for it has been laid. Furthermore, that it does not come within the scope of the court's ruling in the hearing on September 29, 1953, when the court in discussing the question of damages for increased building costs referred to plans, building contracts, and specifications I believe was the third term used by the court. These documents fall far short of that criterion.

The Court: I haven't seen the documents and, therefore, cannot rule on the objections until I have seen them. I will look at the documents.

Mr. Abbott: With respect to counsel's suggestion, I haven't had an opportunity to examine the letters carefully, [813] but I can see no harm, if they are going in evidence over objection, to have them go in in their entirety rather than sorting out the particular paragraphs.

(The documents were handed to the court.)

(Testimony of Adolph G. Sutro.)

The Court: Are these in chronological order now?

Mr. Cranston: I don't know that they are.

The Court: I don't recall the use of the name Cruikshank of Santa Ana.

The Witness: The owner was a man by the name of Cruikshank, of the Bank of Santa Ana.

The Court: That is the same property?

The Witness: The same property, your Honor, largely. There were additions made later on to it.

Mr. Abbott: When convenient, may I call the court's attention to the particular language in the court's remarks of September 29th? I did not mean to interrupt, but I did want to do that before the court rules.

(The documents referred to were examined by the court.)

The Court: Now, what was the further observation that you wanted to make? That was in the hearing of—

Mr. Abbott: September 29, 1953, your Honor.

The Court: I don't think I have the transcript of that.

Mr. Abbott: I would be happy to make my transcript available to the court.

The Court: You can read the portion there. [814]

Mr. Abbott: I am reading from the top of page 118, the first full sentence beginning there, as follows:

(Testimony of Adolph G. Sutro.)

"I think you would be entitled to show the increase in costs of buildings or appurtenances that he had plans for or had made contracts concerning, or anything of that character."

I take it that the court's thought there was that if a man has made plans in detail, or has let contracts, that the scope of the work contemplated is prescribed in some detail. Furthermore, that the accuracy of his recollection of his intentions is somewhat enhanced by that detailed preparation.

The documents offered at this time tell us little or nothing. The witness will have to tell us how many pipes, how many pumps, where he is going to put them, how many reservoirs, or their sizes. There is nothing in the documents that would give the Government any leeway for ascertaining the accuracy of the recollection which the witness will now describe to us if counsel's views are accepted.

The Court: The objection is overruled. These will be received and marked filed. Do you want to read them? I don't think it is necessary to read all of those.

Mr. Cranston: No.

The Clerk: What exhibit number, your Honor?

The Court: There is a lot of stuff there that ought to be excluded from the files of this court. It is all in evidence. [815]

The Clerk: One exhibit number, your Honor?

The Court: Yes.

The Clerk: That will be Plaintiff's Exhibit 37 in evidence.

(Testimony of Adolph G. Sutro.)

(The documents referred to were marked Plaintiff's Exhibit No. 37 and received in evidence.)

Q. (By Mr. Cranston): Now, Mr. Sutro, about the time you bought this property, did you discuss with representatives of the Soil Conservation Service the building of a reservoir for the storage of water?

A. Yes.

Q. Did you discuss this with Mr. Tedford?

A. I discussed it with Mr. Tedford, and I discussed it with Mr. Bosanko, one of his engineers.

Q. When did you discuss it with Mr. Tedford?

Mr. Abbott: Your Honor, we must again object to this line of questioning. This is still one further step removed from the documents last received in evidence. This is on recollection as to an oral conversation; no indication that there has been any specifications for work or that the work has been described in detail, and even when there are specifications, this would not be competent to establish damages in a suit of this type.

The Court: Overruled. [816]

The Witness: Would you please repeat the question?

Q. (By Mr. Cranston): When did you first discuss the matter with Mr. Tedford?

A. When I first purchased the ranch, I would say the latter part—after I had made the deposit on the ranch, in the latter part of 1945, before it was out of escrow, or the early part of 1946.

The Court: Maybe if we took our recess now,

(Testimony of Adolph G. Sutro.)

gentlemen, you could show this material that you have, that you are going to proffer, to counsel on the other side, and have it all marked, so as to save a lot of the court's time.

Mr. Cranston: Yes, sir.

The Court: We will take a recess for about five or ten minutes.

(Short recess.)

The Court: Proceed, Mr. Cranston.

Mr. Cranston: Your Honor, during the recess we have had marked for identification three documents as Exhibits 38, 39 and 40.

(The documents referred to were marked Plaintiff's Exhibit Nos. 38, 39 and 40 for identification.)

Q. (By Mr. Cranston): Mr. Sutro, I show you a document which has been marked Exhibit 39, for identification, and ask you what the lines upon this document represent?

A. May I ask you which color lines? [817]

Q. The blue lines.

A. The blue lines represent irrigation pipes.

Q. And I show you a document marked Exhibit 38, for identification, and ask you what the blue lines and the brown lines on this map represent.

A. The blue lines also represent irrigation pipe. I should have qualified it by saying they represent concrete irrigation pipe. The brown lines represent a steel pipe.

(Testimony of Adolph G. Sutro.)

Q. Mr. Sutro, at the time you purchased this property, it was being used for the growing of edible vegetables, is that correct, or it had been so used?

A. It had been. Its use had been prohibited a few weeks before.

Q. The growing of edible vegetables is a profitable use to put the land to; is that correct?

Mr. Abbott: I will object to that as leading. I don't want to be overtechnical, but counsel has asked a number of leading questions.

The Court: Before we go any further, the objection is overruled as to this one.

The Witness: To the best of my knowledge, it is its highest and best use.

Mr. Abbott: I will object to that and move to strike the answer. It is not responsive, and, furthermore, the witness has not been qualified to give such an opinion. [818]

The Court: I think that is true. You did not answer the question. You elaborated on it. That portion will be stricken out. Now, if you will answer that question.

The Witness: Will you please repeat the question?

The Court: Read it, please.

(The question referred to was read.)

The Witness: Yes.

Q. (By Mr. Cranston): Do you know, of your own knowledge, of any more profitable use to which you can put it?

(Testimony of Adolph G. Sutro.)

Mr. Abbott: Hold your answer, please. I will object to that, your Honor. The witness has not been qualified to give such an opinion. As a matter of fact, in his life's history, which he has given us in some detail, I hear nothing of agricultural experience.

The Court: I was going to ask that question. Suppose I do that before the Court rules.

Had you ever done any farming, Mr. Sutro?

The Witness: No, your Honor.

The Court: What was your formal education?

A. I attended the University of Santa Clara.

The Court: What did you major in, if you had a major at that time?

The Witness: As I look back on it, your Honor, I think it was Latin.

The Court: You never took any course in engineering, [819] or mechanics in any formal educational institution?

The Witness: I took a three weeks course before I made my stress analysis on my plane. That is the limit of my formal engineering training.

The Court: Will you read the answer?

(The answer was read.)

The Court: The objection will be overruled. Will you read the pending question, please?

(The question referred to was read as follows):

"Q. Do you know, of your own knowledge, of

(Testimony of Adolph G. Sutro.)

any more profitable use to which you can put it?"

The Witness: No.

Q. (By Mr. Cranston): Did you intend to put the land to that use? A. Yes.

Mr. Abbott: Objection, your Honor. The witness' intention is wholly immaterial.

The Court: The same ruling as has been heretofore made. Overruled.

The Witness: Yes.

Q. (By Mr. Cranston): For that purpose is an irrigation system essential? A. Yes.

Q. Are the lines which you have identified as representing irrigation lines, which are shown on these two exhibits, [820] designed to irrigate this property?

Mr. Abbott: Your Honor, we will object to that. Again, the witness has not shown any competence in the field which the question presupposes. I assume that his experience in stress analysis and a three-weeks course in engineering does not qualify him to design agricultural irrigation systems.

The Court: There has not been much foundation laid as to these instruments.

Mr. Cranston: I am intending to get at that through this question, your Honor.

The Court: Why don't you come at it directly instead of beating around the bush?

Mr. Cranston: Very well.

Q. (By Mr. Cranston): Mr. Sutro, were these lines placed upon this map by you or under your

(Testimony of Adolph G. Sutro.)

direction? A. Under my direction.

Q. And when were they placed on there?

A. A few months ago.

The Court: Now, let's fix the date a little more specifically, because the Court has made a certain ruling on that. I think I can ask a question that will elicit the fact that the Court wants to know about.

Was it before or after the conclusion of the trial in San Diego?

The Witness: Oh, it was after the conclusion of the [821] trial in San Diego, your Honor.

Q. (By Mr. Cranston): Mr. Sutro, were these lines placed upon the map in reliance upon your own suggestions, or upon those of other individuals, or was it a combination?

A. They were placed upon the map after consultation with people whom I thought were competent to decide on their location.

Mr. Abbott: I will move to strike as not responsive, your Honor. I think the answer goes far beyond the question.

The Court: Yes, I think it does.

The Witness: Will you repeat the question?

The Court: It will go out. Read the question, please.

(The question was read.)

The Witness: A combination.

Q. (By Mr. Cranston): You consulted with other individuals, then, before these lines were placed on the map? A. Yes.

(Testimony of Adolph G. Sutro.)

Q. Who were these individuals?

A. I talked to one of the farmers who had had a wide experience in irrigated fields.

Mr. Abbott: Your Honor, I think we will have to object to this, in view of the tenor of the answer. This appears to be by indirection a method of introducing the expert opinion of someone who isn't here. I assume that the question, from the partial answer, is that certain persons advised the [822] location of these installations in the manner in which they have been drawn on the drawing. If expert evidence of that type is to be produced, it should be produced in court.

The Court: Of course, this is the owner of the property and the plaintiff in the case. He would have a right to testify as such regardless of his technical qualifications.

Mr. Abbott: As to value, your Honor, but not as to the adaptability of a particular system from a technical or agricultural standpoint.

The Court: I think he has a right to testify as to what he did looking to the ascertainment of the problem that was presented. Overruled.

Mr. Cranston : Had you finished your answer? Will you read the answer?

(The answer was read by the reporter.)

The Witness (Continuing): Regarding the location of the outlets.

The Court: Now, let me get this more defi-

(Testimony of Adolph G. Sutro.)

nitely as to the line of evidence by a question to the witness.

These red lines that are delineated upon these exhibits for identification were made by whom?

The Witness: They were put on by my foreman.

The Court: What is his name?

The Witness: Howard Hoots.

The Court: And is he the only person that collaborated [823] with you? You said that it had been done in conjunction with others.

The Witness: No, he did no collaborating. He did not collaborate in any way, except to draw the lines. He is not an expert.

The Court: How did he happen to draw the lines, if he had nothing to do with it?

The Witness: Because the original lines—these are copies, and he copied the other drawings.

The Court: You say these exhibits for identification are copies of some other documents?

The Witness: No, they are copies of the same document. In other words, my understanding of your question, your Honor, was who drew the lines on this particular map. I told you who did it. Now, that is what I—

The Court: And how did he happen to do it is what I asked.

The Witness: Because I told him to copy another map, so that we would have several copies.

The Court: Where is the other map from which he copied? Do you have it available?

The Witness: Do you—

(Testimony of Adolph G. Sutro.)

Mr. Cranston: No, this is the only one I personally have seen. Did the other have any additional information not shown on this one? [824]

The Witness: No, none whatsoever.

The Court: Do you know, Mr. Sutro, how these documents which have been received for identification—from whence they came?

The Witness: To what documents are you referring?

The Court: I am referring to these maps.

The Witness: Why, yes, your Honor. I was instrumental in having them drawn up.

The Court: And who drew them up?

The Witness: You mean the original ones?

The Court: I am talking about these exhibits, for identification, which we have here in court.

The Witness: This was drawn up by my foreman. He copied another—a similar map. We made several copies; two or three copies, in fact.

The Court: And you had the original—what you call the original map—you had it made?

The Witness: Yes.

The Court: Who made that original?

The Witness: Well, that was a combination of one of the ranchers, some concrete pipe people, and myself; two of the ranchers, in fact.

The Court: And where did they get the data? Was the data available to them from any other record or memorial, written memorial, or map? [825]

The Witness: I gave them—I calculated the

(Testimony of Adolph G. Sutro.)

pump sizes, the output, the location of the reservoirs, and with those—with that design data to start, why, they worked up the distribution system.

The Court: And that was all done subsequent to the decision of the court on the question of liability?

The Witness: That was done subsequent to your ruling as to what would be allowed, which I believe was somewhere around September 20th of last year.

The Court: Well, that was then subsequent not only to the decision of the court on the question of liability,—

The Witness: That is correct.

The Court: —but on the ruling that the court made upon a matter in September?

The Witness: That is correct, your Honor.

Nothing was done until your ruling was made.

The Court: Then you never did anything in furtherance of the installation of an irrigation system there until that time? I am not talking about your intentions now. I am talking about the actual doing of something in furtherance of your intention.

The Witness: I will attempt, your Honor, to answer your question to the best of my ability. If I am not doing so, it will not be due to any lack of effort on my part.

I drew up numerous plans. My notes are sketchy. I [826] spent several days attempting to be in a position to come into court and show you sheets of

(Testimony of Adolph G. Sutro.)

paper with all the design data, the calculations and the finished job. I couldn't find them anywhere.

I then spent three days attempting to reconstruct from the fragmentary notes I had. The only thing I can say, your Honor, it was like trying to reconstruct a steak from a handful of hamburger. I could not do it.

The only solution that seemed fair and reasonable was then to produce the minimum plan which would give a satisfactory irrigation system and use that as a basis. There is no representation in the slightest that this plan was made in 1946.

The Court: And there is no evidence to this moment that it was made at any time until after a ruling of the court in September of last year?

The Witness: Oh, I have definitely stated it was made after your ruling. I said it was not commenced until you had ruled. At least, that was my intention.

The Court: Yes, but there were some fragmentary data.

The Witness: Yes. Every time—may I ask my counsel? Well, I had better not.

The Court: No.

The Witness: Excuse me, your Honor.

The Court: I am trying to get at the basis of these [827] exhibits.

The Witness: What did we do? I would have the pump salesman come out to my place. I would give them the specifications for the pumps. A few

(Testimony of Adolph G. Sutro.)

weeks later the Navy would change their plans. We would re-draw the plans or the data, maybe, without rehashing the case. The first plan was a diversion works in the creek bottom.

The Court: That has all been put in the record.

The Witness: No. The irrigation plans.

The Court: No. Your irrigation plans—

The Witness: Are not in the record.

The Court: Your diversion plans.

The Witness: That was the first method. The next one was, I had been in the real estate office of the Eleventh Naval District, and they had shown me the plans of the proposed improvements. I took the liberty of suggesting that if they would put a valve at the bottom of the dam, it would simplify the acquisition of the water. That changed all our design data.

Then we went back to the diversion works, but did not dare install it, because we had given the Navy a right-of-way, and if we put the diversion works in the creek, they would only have had to remove them.

Then—there are innumerable instances in between where—what I would say is this: I finally reached the [828] stage where I was ashamed to have the pump salesman come out.

Then the Halliday plan came, and the information I had in regard to its probable fulfillment was such that we once again sent to the pump companies for pumps based on certain design data. I have those letters, if I may be permitted, your Honor.

(Testimony of Adolph G. Sutro.)

The Court: I think I now understand how these instruments were prepared, and you can go forward with your questions.

Q. By Mr. Cranston: Then, Mr. Sutro, this system was actually designed in its present form in the fall of 1953? A. Yes.

Q. Is it a system which you intend at the present time to place upon the property or do you intend to make further changes in the system?

A. No.

Mr. Abbott: I will object, your Honor. I don't think the witness' intention is material in this instance.

The Court: Overruled.

The Witness: If I can think of a more economical way, I will be only too happy to be open to so install it, and if the Government wishes to suggest any more economical way, I would be only too happy to listen to their suggestions.

Q. By Mr. Cranston: Well, if you received no such suggestions, what course of conduct will you follow? [829]

A. It can go in as designed.

Q. Now, Mr. Sutro, the lines to which we have referred in the past testimony have been the blue lines and the brown lines. Now, there are on this map or chart, in addition,—on Exhibit 38 there is a red rectangle near one corner with the words "road reservoir," and there is a red line near the word "dam," and there is another red rectangle with the words "mesa reservoir." What is indi-

(Testimony of Adolph G. Sutro.)

cated by those lines, and when were those lines placed upon the map? Or I should ask separately as to each.

A. Yes.

Q. As to each installation. As to the road reservoir?

A. The road reservoir,—as I understood your question, you asked when were the lines placed on the map?

Q. Yes.

A. The lines were all placed on the map at the same time.

Q. That is, the red lines were placed on at the same time as the brown lines and the blue lines?

A. Yes.

Q. Now, you testified at the prior hearing to the digging of an additional well in the year 1950.

A. Yes.

Q. After that well was dug, did you make any changes in your plans for the irrigation of the property? That is, [830] in answer to the court's questions, you have testified to various changes of the plans.

A. Yes. That proved to us that we could irrigate the balance of the land. In the past we had only figured on irrigating the land which had been irrigated before.

Q. And what is the purpose of this rectangle marked "road reservoir"?

A. That is what is known as a day reservoir. It permits of lower pumping costs by running your pump 24 hours a day and getting into lower

(Testimony of Adolph G. Sutro.)

service charges by the use of a smaller motor, and lower current charges by being able to get in the lower brackets.

Q. Now, what is the significance of the mesa reservoir?

A. That was designed for the same purpose. It also—in this particular instance, well, in all instances, it allows the use of a smaller and more economical pump. In other words, if I recall it, the mesa reservoir is designed to be filled by a pump at the rate of 200 gallons a minute. That would be too small a stream for an irrigator to handle economically. So the purpose of the reservoir, among others, is to permit of large volumes to come up at one time.

As an illustration, the dam, while being pumped or filled with a comparatively small pump, is designed to permit of the discharge of the water at the rate of between five and six [831] thousand gallons a minute.

Q. And yet it will permit the water to be taken out of the dam in a flow considerably larger?

A. Five or six thousand were my calculations as to the maximum reasonable capacity.

Q. Pardon me. I believe I probably missed the last part of your answer. A. Excuse me.

Q. Now, I show you, Mr. Sutro, a document which has been marked Exhibit 40, for identification, consisting of two yellow sheets of paper, and ask you what that represents, and when it was prepared, and by whom.

(Testimony of Adolph G. Sutro.)

A. That was prepared by Mr. James Bosanko, an engineer of the United States Soil Conservation Service on September 23, 1949. That was just about some months after the Halliday report. It shows the cubic yards of various sections of this dam.

Q. There are figures at the top of the page, and then totaled up, with the words "17.08 ac.ft." What does that represent?

A. That represents the acre-feet capacity of the dam before allowance is made for the amount of fill excavated behind the dam. In other words, the dam would be, according to the Soil Conservation Service—

Mr. Abbott: Your Honor, I haven't objected to these [832] questions, which I had assumed were intended to lay the foundation for introducing these various documents. However, the witness of late has actually been testifying to their contents, and to the extent that he is so testifying, I will object to that as being hearsay, as being immaterial, as lacking any proper foundation.

Mr. Cranston: If the court please, I believe that the witness can testify to what is represented by these figures, and to the method which would be followed in constructing the dam.

The Court: Are you willing to concede the admissibility of these as exhibits in the case, Mr. Abbott?

Mr. Abbott: I certainly am not, your Honor, but I was going to permit counsel a full oppor-

(Testimony of Adolph G. Sutro.)

tunity to identify them, and their mode of operation. However, the present mode of inquiry goes beyond that and constitutes an inquiry into their contents.

The Court: Overruled.

Mr. Cranston: You may answer.

Will you repeat the question? Will you read it, please?

(The question and answer referred to were read.)

The Witness (Continuing): Of a capacity approximating 20 acre-feet.

Q. (By Mr. Cranston): You would add to the capacity prior to the excavation the amount of dirt which was removed [833] in creating the dam, and that would be added to the capacity of the dam?

A. That is partially the case.

Q. What would be the rest of the truth?

A. That the dirt removed from behind the dam to construct the dam, a certain portion of it is on the upstream face of the dam, so that if you make an excavation of five acre-feet, you don't gain a net of five acre-feet in capacity.

Q. You gain only a part of the net?

A. You only gain a part of it.

Q. Now, referring finally to the last lines which have not been identified on Plaintiff's Exhibit 39, for identification, there are certain red lines on this map. What do they indicate?

A. They represent the drainage system in an

(Testimony of Adolph G. Sutro.)

effort to reclaim land which has been damaged by alkali.

Q. And they were placed upon the map at the same time as the other lines to which you have testified?

A. Yes, with the exception of this yellow line, which indicates the amount of land—the acreage of the amount of land affected by alkali, as agreed upon by the Government appraiser and myself.

Mr. Abbott: I will move to strike that answer as not responsive.

The Court: No, it isn't. [834]

The Witness: All right. The only line not put on originally was the yellow line.

Q. (By Mr. Cranston): Now, when was the yellow line put on?

A. (Referring to notebook): Mr. Cotton came out December 15th. I think the yellow line was put on as soon as I could take the drawing to the Soil Conservation to have the acreage calculated. I would say within a week of December 15th.

Q. 1953? A. 1953.

Mr. Cranston: At this time, then, your Honor, we will offer in evidence these three documents, 38, 39, and 40.

Mr. Abbott: The Government makes the following objection, your Honor: first, that the documents are neither material nor relevant to this cause of action; that they do not tend to sustain any properly measurable recovery under the au-

(Testimony of Adolph G. Sutro.)

thorities of the State of California. Further, that they constitute hearsay, and that no foundation has been laid. Further, that the documents which consist of the maps are not the originals, and that the originals have not been accounted for. On the further grounds that this offer is inconsistent with the court's ruling of September 29th, in that the plans, by the witness' testimony, were prepared in *toto* subsequent to the date of that hearing. For all of [835] those reasons we believe that both documents are inadmissible.

The Court: Overruled. On this last document, Mr. Sutro, were those lines delineated there by the same man, the foreman? I mean the original drawings?

The Witness: No. He acted as a copyist. The first plans, due to being scrubbed out, and rubbed out, and so forth, I thought were too dirty to introduce in court, and I asked him to draw up a couple of copies.

The Clerk: These are admitted, your Honor?

The Court: Yes.

The Court: Plaintiff's Exhibits 38, 39 and 40 admitted in evidence.

(The documents referred to were marked Plaintiff's Exhibits Nos. 38, 39 and 40 and received in evidence.)

Q. (By Mr. Cranston): Mr. Sutro, in connection with the lines which are indicated in red on Plaintiff's Exhibit 39, which you have testified

(Testimony of Adolph G. Sutro.)

were drainage ditches, at the time you purchased the property a certain portion of it had already been rendered alkaline; is that correct?

A. That is correct.

Mr. Abbott: Object, and I move to strike that part of the answer that came in while the objection was being made.

The Court: Yes.

Mr. Abbott: I object, first, on the ground the question is leading, and, second, it once again moves into the sphere [836] which is outside the scope of the damages ruled upon by the court in its rulings on September 29th. It appears to be an effort to apply to the area which allegedly was caused to be alkaline by the increase in the water table on this plaintiff's land.

Mr. Cranston: Your Honor, that was not the purpose of it. I was inquiring whether a part of it had been as a preliminary to subsequent questions not related to that area; I mean, not related to the extent of the area, or to damages for rendering that part alkaline, but related to the cost of reclaiming it—or, pardon me—related to the increase in the cost of the installations necessary to reclaim it.

The Court: Objection overruled.

Mr. Cranston: You may answer the question. Will you read it?

The Witness: Would you be so kind as to repeat the question?

(The question was read.)

(Testimony of Adolph G. Sutro.)

The Witness: That is correct; and if I testified—

The Court: Well, you have answered the question.

The Witness: That is correct, yes.

Q. By Mr. Cranston: Did you at the time you purchased intend to drain that land?

Mr. Abbott: Objected to as being leading, and on the further ground it is wholly [837] immaterial.

The Court: That is the same thing that has been discussed before. Overruled. The court has indicated its mind, however.

The Witness: Yes. The land would have been of minor value unless drained.

Q. (By Mr. Cranston): Do you intend—

The Court: May I just ask a question there? Maybe I can shorten the inquiry on this question of intent.

Why didn't you undertake that, then, before the court decided the question, so as to prepare?

The Witness: Are you asking me?

The Court: Yes, I am asking you.

The Witness: Why didn't I undertake what? Excuse me.

The Court: Why didn't you undertake the preparation or delineation in the form in which it now appears graphically, so as to ascertain what items or elements of damage to assert with respect to the matters which you have testified to?

The Witness: Let me see if I understand that.

(Testimony of Adolph G. Sutro.)

The Court: Well, there was no use—

You wanted to get the decision of the court on something before you would prepare the case for trial?

The Witness: No, your Honor. My understanding—now, I am not an attorney—is that the hearing on September 20, 1953, was for the purpose of your deciding what evidence would be admissible at this hearing. [838]

The Court: That is correct.

The Witness: And after you decided what evidence would be admissible, other losses which I had were not brought up to date.

Mr. Cranston: I believe, Mr. Sutro, you probably misunderstood the court's question, or possibly I have. I believe the court had in mind why did you not prepare a plan in 1946, when you bought the property, for the drainage of the property. Why did you not put those lines on a map in 1946. I believe that was what the court meant. I may be in error.

The Witness: Was that your question?

The Court: Never mind what the court meant. Go ahead.

Q. (By Mr. Cranston): Will you go ahead and answer my question? I am assuming—

A. Why, I might answer that by saying that this irrigation system is so simple, we did put it on paper. We put it on paper regularly, frequently. It never seemed necessary to draw it out on a map. After all, the calculations in regard to

(Testimony of Adolph G. Sutro.)

pipe friction, pump activity, lift, capacity of dams and things, are not too involved.

We would make the calculations, send the inquiries to the pump people, and then pray that the Navy would go through with whatever was their current plan. Then when that was changed, we would do that all over again. They were [839] merely work sheets. The actual delineations of these pipelines, your Honor, is really nothing.

I might say that having had a moderate degree of success in organizing construction crews. We built that entire ice rink, with the exception of the piping layout of my refrigeration engineer, and the only plans we had were stuff drawn on the back of a couple of envelopes, and you could build several irrigation systems for the cost of that project.

The Court: Proceed.

Q. (By Mr. Cranston): Then whatever plans you had prepared prior to the hearing in September of last year were informal plans. Can you locate those plans at the present time?

A. I said I had spent three days attempting to rebuild from my notes what those plans were, and I ran into the same problem as trying to reconstruct a steak from a pound of hamburger. I could not do it. So that the only recourse I had was to design, with help, the most economical system of putting the ranch under irrigation.

Q. And is the same remark true as to the system for drainage? A. Yes.

(Testimony of Adolph G. Sutro.)

Q. Is this drainage system, as set forth on the map, one which you intend to install, or do you intend to put in a different system? [840]

A. I intended to install that.

The Court: The same conditions were present, weren't they, Mr. Sutro, at the time the Government, the Navy, arranged for the diversion of the effluent, so that it went out over and down into the Santa Margarita River?

The Witness: The same conditions were in existence at the time—up to the time, your Honor?

The Court: At that time. When there was no longer any real—not prospective, or contingent or supposititious—idea that the Navy was going to again dump this effluent into Pilgrim Creek, the same conditions with respect to what is delineated on these maps that are now in evidence existed so as to enable you to arrive at the cost of installing the irrigation system?

The Witness: That is correct, your Honor. Those maps could have been drawn just as well when the pump-over started, but we were threatened—as you may recall, Mr. McCall twice—

The Court: Yes, threatened by the lawyer, but you weren't threatened by the Navy. You were threatened by the lawyer in his argument.

The Witness: I am unable to distinguish between the various branches of the government who were able to threaten me.

The Court: That is the reason that you did not do any of [841] this work until after the court

(Testimony of Adolph G. Sutro.)  
had decided the question.

The Witness: That is the—

The Court: If you don't understand these questions, now, tell me that you don't understand, and I will clarify them.

The Witness: I am getting a little bit hazy on that one. Will you repeat it, your Honor?

The Court: Well, let's start at the beginning again. You are now laying a foundation, aren't you, to show me damages for the cost of the construction of these instrumentalities which are delineated on these maps, or which are pictorialized in a way?

The Witness: Yes.

The Court: All of those elements were known to you at the time that the diversion of the effluent ceased to go into Pilgrim Creek and contaminate your property?

The Witness: The answer to that is yes, your Honor.

The Court: But you did not do anything until after the court had ruled in September of last year?

The Witness: Yes, your Honor.

The Court: You don't know whether there was any difference in the cost of construction of these improvements or the entire irrigation system between the time that the Navy ceased to dump the effluent into Pilgrim Creek and the period in September of last year? [842]

The Witness: There was a—

The Court: Do you?

(Testimony of Adolph G. Sutro.)

The Witness: Yes, I do know there was a slight increase. I did not feel safe in starting any improvements until after your Honor's ruling, which I believe was made on July 23, 1953.

The Court: That was the decision on the question—

The Witness: That was your decision. That was the first time I thought a prudent man would feel safe in going ahead and investing the tens of thousands of dollars in an irrigation system, and we are not claiming any increase in cost on that irrigation system past the day of your decision.

The Court: But you are claiming an additional amount over and above the amount that would be required at the time that the nuisance—if I call it that for lack of a better term—ceased to exist?

The Witness: Yes, your Honor, because I did not think any prudent man would have been justified in expending that amount of money.

The Court: I assume that to be your reason, but you say you did not do anything.

The Witness: I did not do anything.

The Court: Proceed.

Q. (By Mr. Cranston): Now, Mr. Sutro, the documents which have been introduced in evidence set forth an irrigation [843] system which provides for irrigating various fields. Have you computed the power cost for pumping the water and to irrigate the land through that system?

The Witness: Yes.

Mr. Abbott: Objection, your Honor. In addi-

(Testimony of Adolph G. Sutro.)

tion to the objections on this subject previously made relative to the materiality of all cost estimates, and bearing in mind the court's ruling, I fail to see the materiality, in particular, of the evidence relative to power costs.

Mr. Cranston: But the power costs, your Honor, would indicate the cost of supplying water to the field, which would affect its rental value. The more expensive the water on a particular area, the less valuable the land.

The Court: I assume you will be able to show that there was a variance between the two dates, or the several dates.

Mr. Cranston: Well, no, there is no variance contended for, particularly, in regard to power costs, but the purpose is to establish the cost of putting water onto this particular property.

The Court: You are asking about the power cost, and that is what he is objecting to.

Mr. Cranston: Yes, but there is no question of difference. That is, the Government is not to be—this does not affect the measure of damages of the Government, in so far [844] as the power costs have gone up or come down. I am led to believe they stayed the same, so I don't see the basis of Mr. Abbott's objection.

The Court: What is the relevancy of the question, then, if it doesn't—

Mr. Cranston: The question is this: Assume that it costs \$15 per acre-foot, say, to put an acre-foot of water on a particular piece of property.

(Testimony of Adolph G. Sutro.)

Then the rental value of that property would be less than if that same property could be irrigated with water which, we will say, would cost \$5 per acre-foot, because the tenant could afford to pay more for the land if he had to pay less for the water.

The Court: I see your point.

Mr. Cranston: So the purpose of this is to establish the cost of the water on the property, which would be one factor in the rental value of the property.

The Court: I see your point. Objection overruled.

Mr. Abbott: May I be heard briefly with respect to the point counsel last mentioned?

The Court: No, not right now. Later on.

The Witness: Would you please read me the question?

(The question was read.)

The Witness: Yes.

Q. By Mr. Cranston: What is that cost per acre-foot per acre? [845]

A. Up to and including 1950, irrigating the lower land, it would have been \$1.58 per acre-foot power cost.

Q. And what is the cost for irrigating the mesa land?

A. The cost of irrigating the entire ranch from 1951 to date would be \$2.77 per acre-foot.

Mr. Cranston: If the court please, I have various other questions, of course, to ask Mr. Sutro.

(Testimony of Adolph G. Sutro.)

I am wondering whether at this time, since we are nearing the hour of adjournment, I would be permitted to release him, and to recall Mr. Tedford to ask him a few questions which I was not permitted to ask him this morning, so that he may be released today, and at the court's convenience complete this examination, and that he be released for cross examination at a later time.

Mr. Abbott: I am anxious to accommodate Mr. Tedford, your Honor, but to the extent that Mr. Sutro's testimony is deemed to form a foundation for Mr. Tedford's testimony, I would like the opportunity to test Mr. Sutro's examination by cross.

The Court: That means you will not accede to his request; is that it?

Mr. Abbott: In effect, yes, sir.

The Court: All right. We will have to do that. I am sorry, Mr. Tedford. You will have to come back again. So you can go ahead with your cross examination. [846]

Mr. Abbott: I might make this suggestion, to accommodate Mr. Tedford: that his testimony may come in, but subject to a motion to strike if agreeable with counsel and satisfactory to the court, that if Mr. Sutro's testimony on cross examination fails to furnish the foundation required——

The Court: Of course, you never waive that. By making the concession, you would not waive that anyhow. You would have the right to move to strike out. I want to know whether you are willing to accommodate Mr. Tedford. If you are, say so.

(Testimony of Adolph G. Sutro.)

Mr. Abbott: Yes, your Honor, and in view of the court's last remarks, the Government is happy to do so, because no disadvantage will accrue.

The Court: All right.

Mr. Cranston: Then, Mr. Sutro, will you step down, and I will ask Mr. Tedford to resume the stand.

(Witness temporarily excused.)

### CLARENCE P. TEDFORD

called as a witness on behalf of the plaintiff, having been previously duly sworn, resumed the stand and testified further as follows:

#### Direct Examination (Continued)

By Mr. Cranston:

Q. Mr. Tedford, I will show you again the document which you testified about during the morning session. At [847] that time you stated that this document or the contour lines on it had been prepared by men working in your office. Is that correct?

A. I understand not. I thought that they had. It looked like they were, but Mr. Sutro informed me that he had the survey, the contour survey made, although the outline of the fields and all that was done in our office.

Q. And have you checked the contours?

A. In what way do you mean?

Q. I mean, have your men checked the accuracy of the contours?

(Testimony of Clarence P. Tedford.)

A. Yes, they have. They have it all staked now.

Q. Now, Mr. Tedford, did Mr. Sutro consult with you concerning the location of a dam upon his property? A. Yes.

Mr. Abbott: I will object to that, your Honor, on the ground that once again it moves into the speculative. It isn't material. Even if damages of this type were proper to be awarded under the court's order, as I understand it, of September 29th, it is not oral conversations, it is not intentions of the plaintiff which are material, but the matters which have been reduced to plans, and specifications, and building contracts.

The Court: Overruled.

Mr. Cranston: Will you read the [848] question?

(The question and answer referred to were read.)

Q. (By Mr. Cranston): When did that consultation take place?

A. Oh, it is pretty hard for me to say exactly, but it has been, oh, two or three years ago. It must have been around '49, '50, something right in there, if I remember correctly.

Q. Well, I show you Plaintiff's Exhibit 40, and ask if there were any consultations prior to the making of that memorandum.

A. Well, I had had conferences with Mr. Sutro on the ranch at various times on various things that he was planning on doing. This is a survey that was made on the dam or reservoir. It is dated

(Testimony of Clarence P. Tedford.)

in '49, which I think was about the time that I consulted with Mr. Sutro, possibly prior to that, because I probably delegated the boys to make this survey shortly after I had talked with Mr. Sutro.

Q. Did he consult with you at or about the time he purchased the property in connection with any reservoirs?

A. I think we talked in a general way of a layout for his irrigation, and so forth, on the ranch, yes.

Q. How long was that after he purchased the property?

A. Well, it was probably very shortly afterwards, or during the time of purchase, probably, because, as I remember, he got in touch with us about the time that he did purchase [849] the property, and I was down over the property with him at that time.

Q. Now, there was one question this morning which I do not believe was ever answered. I think it was lost in some discussion. That was whether you had made an examination or determination as to the amount of excavation which would be required to place any acre of that property in a condition where it could be used for the planting of edible vegetables. The question was, did you make such a determination.

A. Well, in going over it, I looked it over pretty carefully, and in order to get furrow irrigation, and that would be what I would presume they would use on that, I made an estimate of in the neighbor-

(Testimony of Clarence P. Tedford.)

hood of 400 yards per acre that would have to be moved in order to get a good grade for furrow irrigation.

Mr. Abbott: I will move to strike as not responsive. The question was, was an estimate made, and not what was the estimate.

The Court: Overruled. Motion denied.

Mr. Abbott: If the answer remains in the record, I would like to make the additional objection, your Honor, that it is immaterial and irrelevant, and may not be considered in fixing the damages of this plaintiff.

The Court: The same ruling. Overruled.

Mr. Cranston: You may cross examine. [850]

#### Cross-Examination

By Mr. Abbott:

Q. Mr. Tedford, you testified this morning that various crops could be grown on the land in question. Among others you testified that flowers, vegetables for seed, alfalfa, black-eyed beans, all of those crops, could be grown on the tillable acreage of the Sutro ranch. Now, sir, will you please state whether all of those crops require an irrigation system.

A. Well, that depends. Dry beans, no. If you want to include dried beans—black-eyes, you say, or mention—that is usually a dry crop, although they can be irrigated very well.

There is one thing I would like to bring out, if I may, at this time.

Q. Well, no, sir.

(Testimony of Clarence P. Tedford.)

The Court: No, we have had enough of that.

The Witness: All right, sir.

The Court: Let the lawyers bring it out.

Q. (By Mr. Abbott): Well, let's take up those crops one by one, briefly. Alfalfa requires an irrigation system, does it not? A. Right.

Q. It requires a large quantity of water, does it not? A. Yes, on most soils. [851]

Q. Does it on the soil on the Sutro ranch require a large quantity?

A. Yes, on this bottom soil, yes. That is with one exception, if and when that is tile drained, it will take quite a little water. Of course, if the moisture is left in there and isn't drained out, why, it won't take much water for a year or two. Then your alfalfa is gone. It is drowned.

Q. In the period in which you examined the land, between 1946 and 1949, did the land have characteristics such as would indicate a large need of water for alfalfa?

A. No, I wouldn't say so.

Q. Would alfalfa being grown on the land during that period require as much water as truck vegetables?

Mr. Cranston: If the court please, I believe this is not proper cross examination.

The Court: I think it is. Overruled.

The Witness: I would say that probably in that location, that is, in this bottom area, it would probably take about the same amount of water.

Q. (By Mr. Abbott): How about in the other

(Testimony of Clarence P. Tedford.)

areas of the ranch? Would alfalfa there require as much water as truck vegetables would?

A. It all depends on your truck vegetables. Some truck vegetables take lots of water. Others don't take so much. Peppers would take less water. Celery would take [852] more water.

Q. Very good sir. Now, if truck vegetables were being grown solely for seed, would they require as much water as they would if grown for the market?

A. They would for a period, and then they usually slow down on the water for seed.

Q. When vegetables are being grown commercially, do they require as much water as do truck vegetables—correction—when flowers are being grown commercially, do they require as much water as do truck vegetables?

A. No, not ordinarily so.

Q. I will call your attention to the irrigation plan which is shown in Plaintiff's Exhibit 39, and in Plaintiff's Exhibit 38, and ask you if that irrigation plan is one which is suitable for the irrigation of alfalfa.

A. Well, now, listen. That is a steady job. That isn't a quick question.

The Court: I didn't hear that.

The Witness: I say that is a steady job, not a quick question.

The Court: I don't understand your answer.

The Witness: Well, you can't just look at a

(Testimony of Clarence P. Tedford.)

print and say that is A-1, or that isn't A-1, so far as an irrigation system is concerned. Offhand, I would say yes, because they have their laterals, and all, and you don't have too far to [853] run. Offhand, I would say it was probably a pretty good irrigating system, but then it takes time to figure out the volume of water you are applying, and how you are applying it, and everything, available water and everything, to really make a system. And this is the first time I have seen this.

Q. (By Mr. Abbott): Let me phrase the question this way, then, Mr. Tedford: Is it as good a system for alfalfa as it is for truck vegetables?

A. Well, there you are again. How are you going to irrigate it? Are you going to flood-irrigate it, are you going to sprinkle-irrigate it, or what are you going to do?

Q. I mean now the physical installation. I am not talking about—

A. As far as the pipeline, yes, it is excellent.

Q. And it is as good for alfalfa as it is for truck vegetables?

A. You do it in the same way.

Q. Is it as good for commercial flower growing as it is for truck vegetables?

A. I would say so.

Q. Is it as good for black-eyed beans as it is for truck vegetables? A. Sure.

Q. Is it as good for truck vegetables being grown for seed purposes as it is for truck vegetables being grown for [854] market purposes?

(Testimony of Clarence P. Tedford.)

A. Your irrigation would be identical.

Q. In other words, the same system would be used for all those purposes; is that right, sir?

A. Yes, pretty much so.

Q. Were you on the Sutro land during each of the years from 1946 through 1952?

A. Oh, I would say probably, yes. I couldn't verify that very well, but I have been on the ranch a couple of times practically every year.

Q. And was alfalfa being grown on the land during the period when you were on the land?

A. It was being grown on the land at the time they were just contemplating—at the time the farm plan was written there, yes, sir.

Q. Did Mr. Sutro, when he talked with you in 1946, show you any plans and specifications for an irrigation system?

A. I don't remember that, whether he did or not. We talked of it, I know that, but I don't think we ever made a plan for him.

Q. Did he show you any plans of his own that he had? A. Not that I remember.

Q. Or specifications? A. No. [855]

Q. I understood you to say, Mr. Tedford, that you are yourself a farmer at the present time?

A. Yes, I have retired to the farm.

Mr. Abbott: Your Honor, at this time I propose to go into certain examination which is properly by way of rebuttal to anticipated testimony of the plaintiff. I do so as a convenience to this witness, so that he will not be caused to come back

(Testimony of Clarence P. Tedford.)

up this long distance, and I would like to do so subject to the understanding that our objections to the evidence which I propose to rebut are not in any way waived, but I simply want to get this information in the record now for convenience.

Mr. Cranston: For this purpose you are making Mr. Tedford your own witness?

Mr. Abbott: For this limited purpose. Is that understood, counsel, that the examination will not in any way constitute a waiver of the objections we may make?

Mr. Cranston: Yes, that is understood.

Q. (By Mr. Abbott): Where is your farm, Mr. Tedford? A. It is in Fallbrook.

Q. How many acres do you farm?

A. Forty.

Q. What crops do you raise?

A. Avocados and lemons.

Mr. Abbott: No further questions, your [856] Honor.

Mr. Cranston: No further questions, your Honor.

The Court: Then I am going to excuse Mr. Tedford now.

Mr. Cranston: Yes.

The Witness: Thank you.

(Witness excused.)

The Court: I think we will recess now, gentlemen, until 10:00 o'clock in the morning.

Mr. Cranston: Very well.

The Court: Unless we make a little better time, gentlemen, I am going to lengthen these sessions a little bit. We haven't made very much time so far. 10:00 o'clock in the morning.

(Whereupon, at 4:22 o'clock p.m., an adjournment was taken until 10:00 o'clock a.m., Tuesday, March 2, 1954.) [857]

Tuesday, March 2, 1954, 10:00 A.M.

The Court: All present. Proceed.

**ADOLPH G. SUTRO**

the plaintiff herein, having been heretofore duly sworn, resumed the stand and testified further as follows:

**Direct Examination**  
(Continued)

By Mr. Cranston:

Q. Mr. Sutro, yesterday afternoon, just before we interrupted your testimony for certain testimony of Mr. Tedford, who was recalled, you had given information as to the cost of power for pumping water to irrigate your lands, and you gave one figure as to the cost before 1950, and another figure as to the cost per acre foot after 1950. Can you explain what causes the difference in the two figures?

A. Yes. The average cost would go up after 1950 because we would then be irrigating the higher lands, and it would require more power to pump the water to a greater elevation.

Q. Would the cost for irrigating the lower lands

(Testimony of Adolph G. Sutro.)

remain the same or go up after 1950?

A. I averaged the cost over the entire area. Without consulting my figures, I am unable to answer the question.

Q. Was there any appreciable change in power rates during [859] that period?

A. No, there was no change in power rates during that period.

Q. Now, you testified at the prior trial that in 1950 you dug another well on your property, in addition to the well which had been there at the time you bought the property? A. Yes.

Q. How was that well located? A. I—

The Court: Was that the well down on Pilgrim Creek, the second well?

The Witness: Yes, your Honor.

The Court: He described that before. Didn't he describe that? The location, I mean? Didn't he describe that pretty thoroughly before?

Mr. Cranston: If he has, your Honor, we won't go into it again.

The Court: I think he did.

Mr. Cranston: I wasn't certain that was in the record.

The Court: My recollection is that you did. Isn't that right?

The Witness: We described the location on the map. I don't so understand Mr. Cranston's question. I thought he said how it was located, and not where it was located.

The Court: If it was a play on words—I thought you [860] meant the same thing.

(Testimony of Adolph G. Sutro.)

Mr. Cranston: No, I was meaning the manner in which it was located, why that particular spot was chosen.

The Court: Very well.

The Witness: Why, I was able—

The Court: Raise your voice a little. I don't hear you too well.

The Witness: Certainly. I was able to obtain the assistance of a man whom I regarded as competent to locate a well, he looked over the vicinity, and told me where to drill, and we found water.

Q. (By Mr. Cranston): Have you made tests for the production of this well? A. Yes.

Q. Can you state what those tests show?

Mr. Abbott: The witness appears to be referring to a document. We would like an opportunity to see what he is referring to.

Mr. Cranston: Yes, you may.

(Handing document to counsel.)

The Witness: This is page 1 of the test. You asked me about the first well?

Mr. Cranston: Yes. I think Mr. Abbott would like to examine it before you testify to it, if you will show him the pages. [861]

The Witness: Oh, excuse me.

Q. (By Mr. Cranston): When did you make this test, Mr. Sutro?

A. From November 11th to November 13th, 1953.

Q. The notes in your hand, were they made by you? A. Yes.

(Testimony of Adolph G. Sutro.)

Q. And when were they made?

A. Immediately after the completion of the tests. They were transcribed from the sheets on which were kept the original well log in the field.

Q. What did the tests show?

A. Well, there are six pages of tests, Mr. Cranston. Would you mind just telling me which tests you have in mind?

The Court: Let me suggest a method of expediting the trial properly. Counsel for the government has seen these memoranda. Apparently they are in your handwriting, Mr. Sutro?

The Witness: Yes, your Honor; prepared by me.

The Court: If you are going into these tests *seriatim*, just put the whole thing in.

Mr. Cranston: Very well. We will introduce the memoranda in evidence. We will offer it.

Mr. Abbott: May I ask one question on *voir dire* relative to the admissibility of the documents?

Mr. Cranston: Yes. [862]

Mr. Abbott: Mr. Sutro, did you make the particular measurements which appear in the six pages of notes you are now holding?

The Witness: Mr. Abbott, this was a non-stop test, 49½ hours. I slept occasionally and did not make all the measurements.

Mr. Abbott: Did you make some of those measurements?

The Witness: Yes, Mr. Abbott, frequently.

Mr. Abbott: Who made the measurements which you did not make?

(Testimony of Adolph G. Sutro.)

The Witness: Usually my foreman. In order to obviate any chance of error, the test readings were taken at 15-minute intervals; more frequent than is usual.

The Court: Now, this foreman is available, isn't he, Mr. Sutro?

The Witness: Yes.

Mr. Cranston: Yes, he will be available if they wish to question him.

The Court: Have you made the offer?

Mr. Cranston: I have made the offer in evidence.

The Court: It will be received.

The Clerk: That will be Exhibit 41 in evidence.

(The document referred to was received in evidence and marked Plaintiff's Exhibit No. 41.)

Q. By Mr. Cranston: Mr. Sutro, did you later dig a [863] third well?

A. Yes, Mr. Cranston.

Q. And did you make tests on that well?

A. Yes.

The Court: Let me see it.

The Clerk: Yes, your Honor.

(The document was handed to the court.)

The Court: The Webb's gauge, is that a commercially known gauge for those purposes?

The Witness: That is the name of the owner of the gauge, your Honor. I had one of my own also, and there was one belonging to the pump company.

The Court: Proceed, Mr. Cranston.

(Testimony of Adolph G. Sutro.)

Q. (By Mr. Cranston): I show you six pages of a notebook, and ask you if those are in your handwriting.

A. Yes, Mr. Cranston.

Q. When did you make those notations?

A. Immediately after the completion of the test on No. 3 well.

Q. Did you personally participate in the making of that test? A. I did.

Q. Did you make some of the readings?

A. I did.

Q. Did you supervise the making of other [864] readings?

A. I did, when I was awake.

Mr. Cranston: I will offer these pages in evidence in the same manner, then, your Honor.

The Court: The same ruling. Received.

The Clerk: Plaintiff's Exhibit 42 in evidence.

(The document referred to was received in evidence and marked Plaintiff's Exhibit No. 42.)

Q. (By Mr. Cranston): Mr. Sutro, at the time you purchased the property, and prior to the order made by the Board of Health directing Mr. Norman Brown to dismantle certain equipment, what area had he been irrigating?

Mr. Abbott: I will object to that as assuming an erroneous state of the record. I think counsel may be confused in framing the question.

Mr. Cranston: I think you are probably right.

(Testimony of Adolph G. Sutro.)

I should have stated: Prior to the time the order was made by the Board of Health, what area had Mr. Brown been irrigating?

Mr. Abbott: I will object to that. This witness has by prior testimony shown no knowledge of the circumstances existing at the time which counsel describes. He has testified that when he negotiated with Brown the order had already been made. He had not seen the land prior to the time the order was made.

Mr. Cranston: I believe the witness could testify to the physical evidence on the land, as to what had been done. [865] In other words, there was no showing in the record that the physical evidence did not remain as to the area that had been irrigated.

Mr. Abbott: That isn't the question that is now pending.

The Court: Objection overruled.

The Witness: Mr. Brown represented to me, and I have no reason to doubt his representations—

Mr. Abbott: I will object, your Honor. The witness is about to testify to hearsay.

The Court: Yes.

The Witness: Okay. Excuse me.

Q. (By Mr. Cranston): Could you tell from a physical examination of the property what area had been irrigated recently prior to the time you purchased the property?

A. I canot tell—I cannot testify as to what area had been irrigated. I can testify as to what area

(Testimony of Adolph G. Sutro.)

had been cultivated, because I did not see water being placed on the ground, and at the time of my purchase the crops had been harvested.

Q. Very well. Do you know where Mr. Norman Brown is at the present time?

A. The last I heard of Mr. Brown, he was a professional dog handler, and he was following the field trial circuits with hunting dogs. If he is not on the field trial circuit, he may be at the headquarters of his employer, which is somewhere [867] in the middle of the Straits of Juan de Fuca.

The Court: Training dogs in the Straits of Juan de Fuca?

The Witness: On an island, your Honor. Excuse me.

Mr. Cranston: Your Honor, I believe this concludes our examination on one phase of the testimony in this case.

I would like, if possible, before the close of the day to put on our expert on land rental values. Mr. Sutro will have occasion to testify as to building plans and specifications and certain other matters, which would not affect the land rental value, however, as such.

With the court's permission, I would like to have Mr. Abbott now cross examine Mr. Sutro on testimony already in, so that we could put on our expert on land rentals, and then have the testimony as to the buildings and the specifications, and so forth, and any other matters to come in later. That will make it unnecessary for our rental expert to remain available for an indefinite period.

(Testimony of Adolph G. Sutro.)

Mr. Abbott: We have no objection to the order of proceeding as counsel suggests.

The Court: Very well.

### Cross-Examination

By Mr. Abbott:

Q. Mr. Sutro, on your direct examination you testified to the price that you paid for the property described in your [867] complaint. What, in your opinion, was the fair market value of the property at the time that you purchased it?

A. In my opinion, the fair market value—may I ask you to clarify that question? Are you referring to the fact that certain parts of the land had been rendered unfit to use—for use, and the fact that that condition was increasing daily? In other words, will you be—

Mr. Abbott: I will move to strike the witness' remarks because they are not responsive. I will clarify the question.

The Court: Yes. I think the question is clear to the court, and I think it should be to you. The answer will be stricken as not responsive.

The Witness: Would you repeat the question?

Mr. Abbott: The reporter will read it back to you, Mr. Sutro.

(The question was read.)

The Witness: I had not arrived at a definite figure. However, I thought I was obtaining a bargain.

(Testimony of Adolph G. Sutro.)

Q. (By Mr. Abbott): Had you known Mr. Brown prior to the time that you negotiated with him for the purchase of this property?

A. No.

Q. Is there any reason why the transaction between Mr. Brown and yourself was not an arm's-length bargaining transaction? [868]

A. None that I would know of.

Q. Do you have an opinion as to the fair market value of the property as of the date you purchased it absent the discharge of effluent from sewage plants 1 and 2?

A. Yes. Based on an appraisal of a man on the Farm Loan Committee of a national bank, who placed a value of \$80,000 on part of it, I would state I think that appraisal was reasonable.

Q. Is that your own opinion?

A. That would be my opinion.

Q. Now, calling your attention to the date that the discharge of effluent from both sewage disposal plants ceased, are you familiar with that date, Mr. Sutro? A. Yes.

Q. Will you state for the record what it is?

A. July 22, 1952.

Q. As of the date last mentioned, what was your opinion of the fair market value of your property?

A. I have never formed an opinion as to the fair market value.

Q. In your opinion, was it as much as the \$80,000 figure which you have previously testified to?

A. Yes.

(Testimony of Adolph G. Sutro.)

Q. Mr. Sutro, have you commenced the construction of the irrigation system which appears to be outlined in some detail [869] in Plaintiff's Exhibits 38 and 39?

Mr. Cranston: Mr. Abbott, here is one of them.

(Handing document to counsel.)

The Witness: No, Mr. Abbott.

Q. (By Mr. Abbott): Have you let any contracts for that work?

A. No, Mr. Abbott.

Q. Now, Mr. Sutro, will you explain to the court why this irrigation system wasn't commenced in 1946, shortly after you purchased the property?

A. At what time in 1946?

Q. Will you explain why it was not commenced at any time in the year 1946?

A. Would you clarify that by telling me what was the current Navy plan at that time?

Q. Let's go at it this way: Plaintiff's Exhibit 37 consists of a series of letters ranging in date from December 27, 1945, through November 13, 1946. Those letters contain certain references to pipelines, dam or dams, pumps. Now, can you state when you abandoned the intention of doing the things that you refer to in a general fashion in that correspondence?

A. Mr. Abbott, you are asking me an engineering question. You are not giving me the data on which to give you an answer. I asked if you would clarify the date on which you [870] wanted the

(Testimony of Adolph G. Sutro.)

answer. I also asked you if you would tell me the status of the current Navy plan. I cannot answer an engineering question without—

Mr. Abbott: Would you read the particular question that is pending, Madam Reporter?

(The question was read.)

Q. (By Mr. Abbott): The question calls for a date, approximate if you will, but a date, Mr. Sutro.

A. I believe I—may I answer the question by calling your attention to some former testimony? I believe I testified to the fact that from the pump specifications I was over a considerable period of time trying to reconstruct backwards the design assumptions, and was unable to do so. I believe that appears in my early testimony in this case.

Now, if you wish me to answer the question, will you give me the assumptions on which—the necessary assumptions to answer your question?

Q. Mr. Sutro, I am asking a question which only you can answer, the question of your state of mind. When did you abandon an intention? Can you answer that question?

A. Which intention, Mr. Abbott?

Q. The intention to do the things which you allude to in a general fashion in the correspondence which is identified in the record as Exhibit 37.

A. Mr. Abbott, we have never abandoned the intention. [871] I have been working for eight years to put that in.

Q. Well, is it your testimony, then, Mr. Sutro,

(Testimony of Adolph G. Sutro.)

that continuously during this period from 1946 to date, you have planned to install the various systems you allude to and have more particularly described in your testimony, but that you simply didn't know how the Navy was going to control the flow of water in Pilgrim—is that the situation?

A. That would be one of the factors, Mr. Abbott, which would govern the construction of the system.

Q. You were concerned as to whether there would be enough water in Pilgrim Creek from the effluent to justify doing the work?

A. I did not say that. Your question was—

Q. I am asking you that now.

A. That would depend on the type of work which was contemplated. If it was contemplated to use the effluent, that would be an important factor. If it was not contemplated to use the effluent, that would be an immaterial point. I will be most happy—I assure you, Mr. Abbott, I am not trying to avoid answering your question—if you will give me the assumptions which will permit me to answer it intelligently, I will be most happy to do so.

Q. I am endeavoring to, Mr. Sutro. During this period in 1946, when you were writing the correspondence alluded to, was it your intention to use the equipment referred to there [872] in pumping effluent from Pilgrim Creek to various points on your land?

A. That was part of the intention.

(Testimony of Adolph G. Sutro.)

Q. And what part of the intention have I not stated?

A. What I intended doing with my well.

Q. You intended to use part of this equipment also to harness the water in Well 1?

A. Depending on the current Navy plan.

Q. Well, it was a problem, then, of water availability whether or not you would have all of the effluent; is that the fact, Mr. Sutro?

A. No, it was a problem of whether a temporary expedient should be put in, and if I could amortize it by the time the Navy made its final decision.

Q. Were you at all concerned about the pollution, if there was pollution in Pilgrim Creek, as it related to this plan?

A. Certainly. We wrote many letters regarding it.

Q. What was the date of the first letter you wrote regarding it, Mr. Sutro?

A. The first written correspondence was on September 4, '46, after the Marine Corps had been unsuccessful in their efforts to purify the well on former occasions. In other words, in dealing with the Marine Corps, with Pendleton, it was easy enough to go over there and talk to them. However, the letter, [873] if I recall correctly, was addressed to the Commandant of the Eleventh Naval District.

Q. And that letter requested that the effluent be terminated?

A. The letter requested that advice from your

(Testimony of Adolph G. Sutro.)

expert engineers be given in regard to methods that would prevent the pollution of my well.

Q. Now, Mr. Sutro, you recall testifying in this cause on Monday, Tuesday and Wednesday, July 20, 21st and 22nd, do you not?

A. I believe I testified on those days.

Q. I will call the court and counsel's attention to the material beginning at page 267 of the transcript of those proceedings, and read you a part of the transcript, Mr. Sutro, and at the conclusion of the reading I will ask you if you recall so testifying. Starting with line 21 of page 267:

"Q. (By Mr. McCall): Now, Mr. Sutro, you testified in your contacts with the Navy, and the officials and persons connected with it, that you had never requested them not to discharge the sewage into Pilgrim Creek; now, I want to ask you if in any letter that you addressed to any of the officials of the Navy you made any contention at all that the plants themselves as operated could have been operated better [874] or differently so as not to produce the pollution?

"Mr. Cranston: If the court please, I will object to that as assuming a statement that was made by the witness which was not made by the witness, and also as a compound question.

"The Court: Well, it is a compound question. You ought to separate it, Mr. McCall.

"Q. (By Mr. McCall): Well, you did testify, Mr. Sutro, on Friday that you never asked the Navy to stop discharging the sewage into Pilgrim Creek?

(Testimony of Adolph G. Sutro.)

"A. I believe, Mr. McCall, I said 'Yes, but I thought I would like to check my files further;' so in answer in that respect and in keeping with your request, I have done so, and the times that we have requested the Navy to cease the flow were, I believe, around March 31st, 1951. I sent a letter to Mr. Cranston asking him to ask the Government to stop the flow. I believe that on November 24, 1952, a meeting was held in Camp Pendleton, in the Quartermaster's Office. Present at that meeting were Colonel Chester Allen, Camp Quartermaster, I believe; Colonel Stone, an aide; the Public Works Officer of Camp Pendleton, whose name slips me; William [875] Taylor, the Ranch Manager for Camp Pendleton; Colonel Robertson, a special officer sent out from the Marine Corps Headquarters from Washington to deal with water problems; Mr. David Agnew, Special Attorney for the United States Navy, Bureau of Yards and Docks; yourself, Mr. Cranston, and myself; there may have been others present, I do not recall.

"At that meeting I asked Colonel Robertson if the Marine Corps would agree to stop discharging sewage into Pilgrim Creek. He said they would. I asked him if he would put it in writing. He drew up an agreement—he drew up, shall I say, a document. He was told, I believe, by you, not to sign it.

"Q. The first request was in a letter, then, that you addressed to your attorney, Mr. Cranston, and not to the Navy?

(Testimony of Adolph G. Sutro.)

"A. That is the first one I could locate in my files.

"Q. That was March of 1951. You had been writing letters, then, about this matter for five years, had you not, when you wrote your lawyer and asked him to ask them not to discharge the sewage into the creek? [876]

"A. We had been writing letters for five years to get a reply to my letter of September 4th—I had been.

"Q. And you hadn't before March 25, 1951, asked anyone to stop discharging sewage into the creek; is that correct?

"A. That was the first case I could find.

"The Court (To the Reporter): Will you read that last question?

"(Answer read.)

"The Court: Well, I don't understand that last answer.

"The Witness: Excuse me.

"The Court: I thought you were asked the direct question whether you had asked the Marine Corps to stop putting sewage in the creek.

"The Witness: Excuse me, your Honor; I have no record of a prior request.

"The Court: You have no record? Have you any recollection?

"The Witness: No, your Honor."

Do you recall being asked those questions and giving those answers, Mr. Sutro?

(Testimony of Adolph G. Sutro.)

A. I do, Mr. Abbott.

Q. Now, let's call your attention to the date in 1950 [877] when you drilled the wells that you have just described. You found, did you not, as a result of the tests which you have described, that there were ample sources of water under the ground on your ranch?

A. Yes, Mr. Abbott.

Q. Will you please explain why an irrigation system along the lines you have described in court was not constructed at that time?

A. That was on July 21, 1950?

Q. Well, the particular dates when you drilled the wells. You have previously testified to those dates.

A. Well, I was just confirming it.

Q. I believe that was November, 1950.

A. The first well was tested December 16, 1950. Is that the—shall we assume that is the date for the question?

Q. It may be.

A. And you wish to know why I did not construct an irrigation system immediately?

Q. Yes, sir.

A. Because the report from the San Francisco Board of Health showed a bacteria count in excess of 1,000,000 colonies per cc, and the inspector asked me if I was playing a joke on them and giving them pure sewage to analyze.

Q. Well, now, isn't it a fact that alfalfa was being grown on your land at that time, Mr. [878] Sutro?

(Testimony of Adolph G. Sutro.)

A. Excuse me. I thought you asked me why I didn't construct an irrigation system at that time. It is a fact that alfalfa was being grown at that time.

Q. And that alfalfa required large amounts of irrigation water? A. Yes, Mr. Abbott.

Q. Let's call your attention now to the date of July 1952, when, according to the record in this matter, all sewage effluent discharge from the Marine Corps Base ceased. Will you explain to the court why the irrigation system you described wasn't built at that time?

A. Why, certainly. In this testimony in this transcript the court asked me, do I have—I believe I said I had no record, and the court asked me, "Do you have any recollection, Mr. Sutro?" And I said, "No." I have a recollection now.

Q. Well, then please answer.

A. You are asking me why I did not do it?

Q. All right.

A. One of the reasons was we had applied for an injunction in the federal court and had been told that the Tort Claims Act did not cover injunctive relief.

The Court: You mean by that that you now remember, and that you forgot then?

The Witness: Yes. I had forgotten we had applied for an [879] injunction and been turned down. It is a part of the record in Judge Weinberger's pre-trial.

Q. (By Mr. Abbott): Now, you heard the testi-

(Testimony of Adolph G. Sutro.)

mony of Mr. Cannon in July, of 1953, when Mr. Cannon made the statement, which I am paraphrasing, but will go to the record if counsel has any objection—made the statement to the general effect there was no possibility of further effluent being discharged into Pilgrim Creek because of the arrangements made.

A. That was in July, of 1953?

Q. Yes, sir.

A. At the time of the final—

Q. At the time of the last hearings in this matter.

A. I am doing what I can to get things started. I expect to proceed immediately with the construction of the irrigation system, as soon as I am made whole. After all, I am not made of money, and I have to cut my suit to fit the cloth.

Q. Well, is it your explanation, then, Mr. Sutro, that for reasons of financial inability you haven't installed the irrigation system?

A. You mean since July to date?

Q. At any time.

A. No, that is not my explanation. You asked me if I had heard Mr. Cannon's testimony of July 22, 1953, I believe. What have I done since that time? Is that your question, Mr. Abbott? [880]

Q. That was my question.

A. I said I had been working on getting things ready, that construction had not started, until I was made whole, because after all I would have to cut the suit to fit the cloth.

(Testimony of Adolph G. Sutro.)

Q. Well, is it your testimony that you neglected or failed to install this system between July of 1953 and the present date because of financial inability?

A. No, that is not my statement. My statement is that I may have to eliminate irrigating a part of my ranch until I see what the court does for me in this matter.

Q. Do you have ample funds to install the system, part from whatever recovery you may have in this action, Mr. Sutro?

A. I believe that I could manage it, and I might have to skimp somewhere else.

Q. You mean skimp somewhere else in your investments, not in your personal standard of living?

A. My personal standard of living, Mr. Abbott, is very modest.

Q. Then the skimping would be in the terms of your other investments, I take it?

A. Yes, Mr. Abbott.

Q. Now, did you investigate underground sources of water at the time that you purchased the property in 1946, Mr. Sutro?

A. No, Mr. Abbott, not until this man looked at it. [881]

Q. Of course, you were aware that there was a well on the property when you bought it?

A. Oh, yes.

Q. And did you make any efforts to ascertain how large a basin was pumped by that well?

A. No. I only relied upon its history, Mr. Abbott.

(Testimony of Adolph G. Sutro.)

Q. Did you make any efforts to ascertain whether additional wells could be drilled on the property to tap the same basin, in order to secure larger quantities of water?

A. Not until I asked this man to tell me where to drill.

Q. In 1950? A. In 1950.

Q. In your contacts with the Soil Conservation Office at Fallbrook, did you ask them if they had information relative to water basins under the land on the area of your ranch?

A. No, just merely looking at the topography, I thought it might be worth inquiring into.

Q. You thought it might be worth inquiring into at what date, Mr. Sutro?

A. Well, as long as the various Navy plans were in effect in regard to purifying the creek water there was no reason for investigating additional underground supplies.

Q. Really what you were concerned with was whether or not you would continue to receive the large volume of effluent, [882] and whether you could install a system which would make use of that large volume of water; isn't that the case?

A. That is not the case.

Q. Then what changes in the Navy's plans were material to your inquiry?

A. Well, to start again, if we may, or if I may, I would be very happy to figure this for you. I believe you said any date?

Q. It is a very, very wide question, Mr. Sutro.

(Testimony of Adolph G. Sutro.)

What changes in Navy plans were material?

A. I would have to know what plans you have in mind. After all, your own witness, Mr. Abbott, testified that dozens of plans were contemplated. Therefore, I would have to give you dozens of answers unless I knew which plan you were speaking of.

Q. The plans that were contemplated were plans relating to the volume of fluid which would be flowing in Pilgrim Creek at any particular time, were they not? A. They were not.

Q. I think the prior record will speak for itself on that. Did you at the time that you purchased the property inquire into the types of crops which could be raised on the land, Mr. Sutro?

A. I think I did.

Q. You knew that there was possibly fluid water there, [883] so you were interested in alternate crops, were you not?

A. No, I was not particularly interested in alternate crops at the time. If you recall my original testimony in the original trial, I thought that when a condition of pollution was brought to the attention of the Navy, or the government, when they are the leading exponents of pure water, that it would be corrected immediately.

Q. So you felt that as soon as you requested someone to cease the polluting of the stream, that action would be taken and that you could grow the truck vegetables that you wanted?

A. I thought an effort would be made to operate

(Testimony of Adolph G. Sutro.)

the plants in such a manner as to properly purify the effluent.

Q. If you were to so request and call their attention to the condition existing?

A. I believed it was the law of the State of California, and that they would be happy to comply with it.

Q. In any event, did you at any time from 1946 until July of 1952 inquire into the other crops which could be grown on the land? By "other crops" I mean crops other than edible truck vegetables.

A. Yes, Mr. Abbott. I will reply to you somewhat as your own engineer did in regard to the Pilgrim Creek plan. I don't know anything that we did not inquire into in an effort to mitigate the damages. [884]

Q. And you investigated the possibility of growing flowers commercially upon the land?

A. That was looked into.

Q. And you looked into the possibility of growing vegetables for seed on the land?

A. That was looked into.

Q. And you looked into the possibility of growing alfalfa? A. That was looked into.

Q. And of growing black-eyed beans?

A. Black-eyed beans were discussed.

Q. And probably several other crops also were discussed?

A. I said their number was infinite.

Q. You have heard Mr. Ikemi describe the irri-

(Testimony of Adolph G. Sutro.)

gation system which he used on the land. Was that system still there, with the exception of the change of pump which Mr. Brown effected, at the time that you purchased the land, Mr. Sutro?

A. No. Excuse me. Will you repeat that question?

Mr. Abbott: Yes. The reporter will read it.

(The question was read.)

The Witness: Mr. Abbott, would you explain the phrase, "the change in pump"?

Q. (By Mr. Abbott): Well, there has been testimony in [885] this present hearing to the effect that Mr. Brown put a new pump into the system being used by Mr. Ikemi. Now, with that exception, was the system used by Ikemi still physically present on the property at the time that you purchased it?

A. No, Mr. Abbott.

Q. What portions were missing?

A. In accordance with the edict of the Board of Health, the creek pump had been dismantled and removed.

Q. With the exception of the removal of the creek pump from the sump pit, was the balance of the system in existence?

A. Was the balance? I know what system was in existence at the time I purchased the ranch.

Q. Well, was that the system that Mr. Ikemi described yesterday, excluding the changes already alluded to?

A. It sounds as if it may be.

The Court: Just a minute. I want you to clarify

(Testimony of Adolph G. Sutro.)

that. I heard what Mr. Ikemi said, and I presume that you did also.

The Witness: Yes, your Honor.

The Court: What do you mean by "it sounds"? You heard what he said, and he described it specifically, didn't he?

The Witness: Well, there were certain changes that Mr. Brown made in the pump and the Ikemi pump—the creek pump had been dismantled, and so forth, and the question now is, as I see it, did Brown make any other changes between the [886] time he purchased the ranch from Ikemi and the time he sold it to me, and all I can say is that in general it seems to be the same. Brown might have made several changes, but I would not be familiar with them.

The Court: That was the way you understood Mr. Abbott's question, was it?

The Witness: Yes, your Honor.

The Court: Proceed.

Q. (By Mr. Abbott): Now, Mr. Sutro, calling your attention to Plaintiff's Exhibits 38 and 39, which are the charts prepared by you or under your direction last fall, charts relating to your proposed irrigation system, that is a system which is suitable for irrigating alfalfa, is it not?

A. Yes, Mr. Abbott.

Q. And for irrigating flowers grown commercially? A. I doubt it.

Q. For what reason is it not satisfactory for the latter purpose?

(Testimony of Adolph G. Sutro.)

A. Because most of the flower growers whose installations I have noticed use what is known as an oscillating overhead sprinkler line. This system, in order to save money, wherever possible, uses low-priced concrete pipe. It will not stand the pressure sufficient to operate an oscillating line.

Q. If the specifications for the pipe were changed, would the system be as suitable for growing flowers commercially [887] as it is for growing truck vegetables?

A. When you say the specifications were changed, to what specifications are you referring, Mr. Abbott?

Q. If the specifications were changed to iron or aluminum pipe, would it be as suitable for one purpose as for the other?

A. If the specifications were changed to iron, aluminum or steel pipe, it would irrigate flowers.

Q. Is it a system which is suitable for the irrigation of vegetables grown for seed?

A. If it were possible to grow vegetables for seed there, the system would be very satisfactory.

Q. Well, in general—

A. In general, I said the system would be very satisfactory.

Q. In general, this is a flexible irrigation system that can be used where irrigation is required on virtually all crops which will benefit by irrigation; is that not a fact?

A. To a large extent. The only exception that occurs to me offhand, there may be others, is flower

(Testimony of Adolph G. Sutro.)

growing, on certain portions of the system.

Q. When did you sell Sutro Baths?

A. September, 1952.

Q. Now, during the period between the purchase of the [888] property by you and the present time, have you owned common stocks?

Mr. Cranston: If the court please, I do not see the materiality of that question.

Mr. Abbott: I would be happy to explain it, your Honor.

The Court: Is it on this question of interest that was raised?

Mr. Abbott: No, your Honor, it is a wholly separate question. The materiality is this: The theory of plaintiff's damages in this case in part is that due to inflation building costs have increased from 1946 to the present time.

Now, inflation has not been limited to the building industry. If the moneys which were to be invested in the improvements he described during this interval have been invested in equity type investments, real estate, common stocks, things of that type, then those values have been increasing at the same rate or perhaps a greater rate than have building costs.

If this be speculative, your Honor, it is no more speculative than the very item of damage which we are seeking to rebut.

The Court: I don't know—we have had so many novel principles suggested in this case—where are we going to terminate the novelty of these princi-

(Testimony of Adolph G. Sutro.)

ples? But I never understood [889] that one who is injured by a tort could, or the wrongdoer could as an offset to the detriment, the damages, claim that the injured party was not damaged because he invested money in other enterprises and made it.

Mr. Abbott: I have never seen a case, your Honor, where inflation was used as a factor to increase the damages suffered by the plaintiff, but if inflation has affected the cost of these improvements, it has affected the value of the investment in which the money has been held pending the time, according to his theory of the facts, when he could have erected the improvements—there is novelty in our argument, but there is novelty in the damages which the plaintiff seeks.

The Court: There is a good deal of novelty in the plaintiff's case, too. I think the court has adverted to it several times, and called attention to the crucial aspects of damages in this case very early in the proceedings, and that is still the court's mind, pioneering, but that is going a little too far. We have to take the inflationary condition into consideration, particularly on the question of market value. I think the court has previously expressed itself that this question of market value in the inflationary period was a very uncertain matter, notwithstanding the very eminent experts who testify about it, that it is what the buyer wants to pay and what the seller wants to convey his property for. That is hardly a criterion of market value, as we understood [890] the term, and we understand

(Testimony of Adolph G. Sutro.)

the term in the cases. But I don't believe because a man has dual commercial activities, that where he has been injured by a tort feasor as to one of his activities, that the party injuring him can say, "Well, you weren't damaged, because you have a lot of stocks and bonds, and you invested in an inflationary period in the stock market, and you made so much money. Well, we just offset your damage here by what you made in this other enterprise."

Mr. Abbott: That is not our argument, your Honor. It isn't quite that. It is this: That the very gravamen of this item of damages he seeks, an essential element in the chain of the element of proximate cause is inflation. Inflation is a two-edged sword.

The Court: But he isn't responsible for the inflationary aspect. Neither is the government responsible for it. It is a condition in the economy of the country that exists. You cannot ascribe any reason for it. You may point to war activities and the war economy, and all of those matters, the excess of population and therefore the demand for things that raise the price, but I think we are getting into a realm of economics here that can hardly be attached to any legal principle. We are all hopeful that this is simply a temporary condition, and that these so-called emergencies that brought it about will disappear. Some of us feel that they will disappear [891] with proper administration. Others with perhaps persuasive arguments say that it is fixed and attached, and we are going to con-

(Testimony of Adolph G. Sutro.)

tinue to have episodes of emergency created for the purpose of stifling the constant increase in the cost of materials and services. I am not going to get into that realm. We are going to pioneer here as much as we can, but I do not believe that is a proper subject matter of inquiry here.

Mr. Abbott: I think it is like non-Euclidian geometry, when you start with some new basic premises you come out with a number of new results over an ever-expanding field.

The Court: Yes, but in my judgment these are not basic aspects of the economy. Even the protagonists for the spending idea say that that is caused by emergencies. There are emergencies that arise because of conditions that prevail not only here but throughout the world. How long are those emergencies going to continue? Is it going to become a fixed policy? Personally, I do not think that it is, and I have just the confidence in our economy that eventually it will be adjusted. It is going to be tough and hard to do it. There are people who have been getting beneficenses and relying upon them in business—I am talking about business now—and it is hard for them to pry themselves loose from that. The economic and political system of today indicates that, and the history of the times, but the farm situation has so attached [892] itself that subsidies are required.

Now, are those matters legal principles that we can standardize in tort cases? I do not believe so.

(Testimony of Adolph G. Sutro.)

Some other court will have to take that burden. I am not going to do it.

Now, what is the state of the record?

(The record was read.)

The Court: Sustained.

Mr. Abbott: With deference to the court's ruling, we would nevertheless like to ask a limited number of questions along the same line to make the record in this matter.

The Court: Go ahead.

Q. (By Mr. Abbott): Mr. Sutro, during the period commencing with the purchase of the subject property and ending with the present time, have you continuously owned real property other than the ranch in question?

Mr. Cranston: The same objection, your Honor.

The Court: Well, that may be. Now, he has testified—I presume he is going to testify, and has already testified partially to the value of this property, and I presume that it is the weight of the opinion of an owner of property. If a man has not ever bought property and sold it, his evidence as to the value of that property certainly does not have the weight, should not have the weight that one who has been dealing in property has. I think he might answer that question. I will permit him to answer that question. [893]

The Witness: Would you read the question, please?

(Question read.)

(Testimony of Adolph G. Sutro.)

The Witness: No.

Q. (By Mr. Abbott): Have you owned real property during any of that period? A. Yes.

Q. For what years, what periods?

A. Until September of '52.

Q. Now, you were asked in the preceding question whether you were the owner of real property other than the subject ranch, and if it was not continuous from the purchase of the subject ranch until the present date. Since it was not continuous, will you define the particular periods in which you owned other real property?

A. I owned other real property until September of 1952. I thought that was my statement.

Q. Perhaps I misunderstood. You mean commencing with the date of the purchase of the ranch?

A. Until September of 1952.

Q. Thank you. Does the value of that other real property owned exceed the cost of the installations, buildings, and structures, you had contemplated erecting on the Sutro ranch? A. Does—

Mr. Cranston: I think I will object to that as immaterial [894] to the issues in this case.

The Court: Overruled.

The Witness: Would you repeat the question, Mr. Abbott?

Mr. Abbott: The reporter will read it back to you.

The Witness: Thank you.

(The question was read.)

(Testimony of Adolph G. Sutro.)

The Witness: You mean owned before 1952?

Q. (By Mr. Abbott): Let me rephrase the question. I think it can be clarified.

Did the value of all real property owned by you, other than the Sutro ranch, on the date that you bought the ranch exceed the cost of erecting all of the improvements and structures and buildings on the ranch which you contemplated erecting at the time that you purchased it? A. Yes.

Q. Did the value of the common stocks owned by you at the time that you purchased the ranch in 1946 exceed the cost of the improvements which you contemplated erecting on the ranch at the time that you purchased it?

Mr. Cranston: If the court please, the witness has not testified that he owned any common stocks because the objection to the question asking that was sustained. So this question assumes facts not in evidence, and is subject to the same objection as the questions relating to common stocks.

Mr. Abbott: I am attempting to make a record, your [895] Honor. I realize there has not been an answer to it.

The Court: I want you to make your record as secure as you would like to have it, but I don't want you to prolong the inquiry along those lines. Objection sustained.

Mr. Abbott: I have only one or two more questions of this type, your Honor.

Q. (By Mr. Abbott): Did you have in your possession in 1946, at the time you purchased the

(Testimony of Adolph G. Sutro.)

ranch, cash funds equal to the cost of all of the improvements which you contemplated erecting on the ranch?

Mr. Cranston: The same objection, your Honor. It is immaterial.

The Court: Will you read that question, please? That is a little different now.

(Question read.)

Mr. Cranston: I do not see why it would make any difference, your Honor, whether he had cash funds, or borrowed the money, or sold any other property—the means by which the money would be obtained.

The Court: I think I will overrule the objection to that.

The Witness: I had assets sufficient to finance all contemplated improvements at the time of the purchase of the ranch.

Q. (By Mr. Abbott): The question was cash funds, Mr. [896] Sutro. Will you answer it bearing in mind those words?

The Court: Is it the idea to bring it within those condemnation cases where the question of the market value is expressed in terms of available and immediately available dollars? Is that the point?

Mr. Abbott: This question really has a dual purpose, your Honor; the point that the court has last made, the question of ability to do the things which he says he was going to do, and, finally, the question of the effect of inflation upon the sources.

(Testimony of Adolph G. Sutro.)

The question is directed to all of those aspects of the case.

The Court: I think on the former situation, the one that the court has adverted to, the question is proper. On this so-called inflationary aspect, I am not going to take any stock in that at all.

Mr. Abbott: I respect the court's ruling in that regard. I am not arguing that any further.

The Court: Overruled. Now, will you read the question?

(Question read.)

The Witness: By cash funds, you mean bank deposits?

The Court: Specie. He means specie—money.

The Witness: Not gold coin?

The Court: I guess not gold coin.

The Witness: I did not have cash sufficient at that [897] time.

Q. (By Mr. Abbott): Did you have cash plus demand deposits or demand obligations in that amount?

A. My recollection is that within a very small amount, I had cash and quick assets and demand obligations sufficient to finance the entire program.

Q. What do you mean by quick assets?

A. Negotiable securities, currency, bank deposits, or something of that order.

Q. By negotiable securities, are you referring to debenture bonds and other debt type obligations?

(Testimony of Adolph G. Sutro.)

A. Any type of security which is readily negotiable.

Q. Then limiting the question to demand deposits and cash, were your assets sufficient, those particular types of assets sufficient to purchase them?

A. I do not recall exactly, but it would not be my policy to have that much money, if I have it, idle in the bank.

Q. Now, Mr. Sutro, you testified on direct examination that certain reservoirs were added to the irrigation system described in order to conserve utilities, electric power in particular I believe you referred to. Have you computed how much of a saving would be effected in a year by adding those installations?

A. I do not think I made the statement on which you are basing your premise. [898]

Q. If I misinterpreted your testimony, please correct me.

A. I believe I stated one of the reasons for constructing the day reservoirs.

Q. Have you in fact computed the saving in electricity attributable to that installation in a year?

A. Would you clarify that for me? Have I computed the savings in electricity attributable to that installation in a year? In comparison to what other installation, Mr. Abbott? I cannot compute savings unless I know where we start.

Q. All right. You have testified that certain reservoirs were added to the system.

(Testimony of Adolph G. Sutro.)

A. Yes.

Q. Either in whole or in part motivated by a desire to save electric current?

A. I believe it was in part.

Q. What is the dollar saving in electric current attributable to adding those several reservoirs to the irrigation system?

A. Over what other method?

Q. Over having a system without the reservoirs.

A. I have never even attempted to figure a system without the reservoirs.

Q. It is possible to irrigate directly from the wells, [899] isn't it, Mr. Sutro?

A. If you wish to spend the excessive labor costs which go with irrigating with small streams. In other words—may I just look at my book for a minute? I would like to get a note.

Q. Certainly.

The Witness: Your Honor, may I make a statement subject to correction? I don't like taking the time of the court.

The Court: No, not unless it is an answer. If it is an answer, you may go just as far as you feel is necessary to answer the question, but you have two very good lawyers here, and you can talk to them during the recess if there is anything you want to bring out.

The Witness: Oh, here you are, yes. Now, you said it was possible to—would you have the question repeated?

(Testimony of Adolph G. Sutro.)

Mr. Abbott: The reporter will read it back to you.

The Witness: Thank you.

(The question was read.)

The Witness: Would you tell me, in order to illustrate my point, the output of the well that you contemplate using for comparison?

Q. (By Mr. Abbott): Well, if the information is necessary to your answer, use the actual output of the wells on the property, which you testified to in some detail. [900]

A. Which particular one? The outputs vary.

Q. Let's use them all, where appropriate.

A. As individual wells?

Q. Is there any reason why they can't all be pumped when the agricultural circumstances so warrant? A. None whatsoever.

Q. Then pumping them all at the same time, that would be the assumption that the question would contain?

A. I see. Well, in that case one irrigator would handle a larger volume of water than the combined output of the wells, and you would then be relegated, in the event of warm dry winds to using the services of only one irrigator instead of having a reserve of water, which you could put on rapidly on high-priced crops. You would have a very minor flow readily available, comparatively minor flow readily available.

Q. Now, is it your testimony that these wells

(Testimony of Adolph G. Sutro.)

acting or operating in combination cannot produce enough water to keep one irrigator busy for a time? I am just endeavoring to clarify it in my own mind.

A. Assuming that the maximum that one irrigator can handle in thorough irrigation is 1,750 gallons per minute, the total output of the wells would not keep him busy, because the wells in total do not produce 1,750 gallons.

Q. Where do you get the 1,750-gallon figure, Mr. [901] Sutro?

A. Discussing it with the farmers in the neighborhood, as to the number of rows one irrigator could handle in vegetables, and about the gallons per minute per row.

Q. That is the maximum figure. Did you get an average figure?

A. No, because I was—the answer is: No.

Q. Did you ask for an average figure?

A. No. I was interested in the maximum.

Q. What is the total capacity of your wells operating in combination?

A. Would you—I am not attempting to split hairs, Mr. Abbott, I assure you, but, after all, you are asking questions and I would like to answer them intelligently. Are you asking me, what is the maximum amount my wells will produce, or are you asking me what is the maximum amount I intend to pump from my wells?

Q. Well, answer both questions, if you will.

A. The first one I cannot answer. The second one I will answer by saying 900 gallons a minute.

(Testimony of Adolph G. Sutro.)

Q. That is the amount—

A. Wait a minute. To save time, I think it is 900 or 925 gallons a minute. If you wish, I will look up the data.

Q. That is the amount you intend to pump?

A. That is correct, yes. [902]

Q. Haven't you computed the maximum production of all the wells?

A. The wells will produce more than I need. Therefore, I have not worried about the maximum production.

Q. Will the wells produce 1,750 gallons per minute? A. No.

Q. Will the wells plus a sump pit in the basin of Pilgrim produce 1,750 gallons per minute?

A. Would you repeat that? I don't quite follow it.

Q. Well, you are aware of Mr. Ikemi's practice of irrigating the land from a sump pit?

A. Yes.

Q. In the bed of Pilgrim Creek?

A. Yes.

Q. If such a pit were employed in conjunction with the wells, would you have a production of water equal to 1,750 gallons per minute?

A. I do not know what the sump pit in the bottom of Pilgrim Creek would produce. For your information, in computing this irrigation system—may I look at my notes? I think it would help.

The Court: You are now looking at a typewritten statement, Mr. Sutro. Is that just a typewritten statement of your notes?

(Testimony of Adolph G. Sutro.)

The Witness: Yes, your Honor. These are my notes, and I [903] had a young lady type them.

Mr. Abbott: May I inspect the document?

The Witness: You may. (Holding document to counsel.)

Mr. Abbott: Thank you.

The Witness: I had contemplated a draft on any sump in the creek of 225 gallons per minute, Mr. Abbott. I do not know whether it would produce 1,750 gallons.

Q. (By Mr. Abbott): Now, bearing in mind the factors you have discussed, to wit, the cost of electricity and the cost of labor, have you computed the saving in any year attributable to the installation of the reservoirs which are outlined in Exhibits 38 and 39?

A. The only two factors which you were taking into consideration, I take it, is the cost of electricity and the cost of labor.

Q. Are there any other factors?

A. The most important you have overlooked, Mr. Abbott.

Q. Well, I overlook a lot of things. What is the factor I have overlooked?

A. The insurance value protecting high-priced crops by having readily available large quantities of water.

Q. Well, then, not considering the latter factor, and only considering the saving of electricity and labor, have you computed what those savings would be?

(Testimony of Adolph G. Sutro.)

A. I haven't worked them out in detail, no. [904]

Q. Have you worked them out in any fashion?

A. Mentally. It seems so obvious that it seems a waste of time to compute the obvious.

Q. Do you have an approximate figure in mind?

A. No.

Q. Was the land owned by you, or any part of it, leveled by Miss Whelan during the period when she was a tenant on the property?

A. Yes, the customary temporary work was done.

Q. She did level the land?

A. She did some leveling of the land.

Q. How many acres did she level?

A. She ran a float over the lower field.

Q. I don't understand that answer. What did she run over the field?

A. I called it a float. Around 60 acres. There was no real leveling done.

Q. She did that just prior to planting alfalfa, did she not? A. Yes.

Q. And thereafter she grew alfalfa for how long?

A. Well, I don't recall, but it is in the record of this case, I believe.

Q. Well, it was more than two years, was it not?

A. I think—I am unable to testify to that from memory. [905] It is a matter of record, and the record would be more accurate than any memory of mine.

The Court: We will give the reporter a little rest here and recess for about five minutes.

(A short recess.)

(Testimony of Adolph G. Sutro.)

Q. (By Mr. Abbott): Mr. Sutro, did you inquire into the feasibility of using a portable irrigation system on the property?

A. Yes, Mr. Abbott.

Q. Did you get figures for such a system?

A. Yes, Mr. Abbott.

Q. Did you find that to cost more or less than the system which is described in Exhibits 38 and 39?

A. We were unable to complete the figures which we obtained because we did not have all the design assumptions, which I asked you to supply to me on your earlier questions. I have a letter in my file from one of the portable people, with their suggested layout for a part of the ranch. But, as I say, there was a blank spot in there, lack of data for the complete breakdown of costs.

Q. Well, let's point this inquiry to the period subsequent to July of 1952, when the effluent was no longer discharged into Pilgrim. A. Yes.

Q. As of that time did you inquire into the cost of a [906] portable irrigation system, or at any later time?

A. I do not recall the exact date, but the inquiry regarding the portable system was made, Mr. Abbott, so I cannot intelligently answer your question. If you wish, I will refer to my records and tell you when it was done.

Q. By all means. If the records will assist you, if they will refresh your memory, you are free to inspect them.

The Witness: Shall I do it now, your Honor?

(Testimony of Adolph G. Sutro.)

Mr. Cranston: Do you wish Mr. Sutro to do it now, or to do it during the noon recess?

The Court: Do it later, yes. Let's get along with the interrogation, and then later on you can take your time to look at the records.

Mr. Abbott: Very well. I will reserve that question. I understand that there will be direct examination of Mr. Sutro at a later date, and at that time, if counsel has no objection, I can complete the cross-examination upon this particular point, and Mr. Sutro will have an opportunity to check his records.

The Court: Yes.

Mr. Abbott: I have no more questions at this time.

The Court: Now, if that is the case, I think we will have it now. So look at your records and answer the question.

(The witness referred to certain [907] documents.)

Mr. Abbott: If I may see the documents you are referring to, Mr. Sutro.

(The documents were handed to counsel.)

The Witness: These have no bearing, unless you wish to look at them, Mr. Abbott.

Mr. Abbott: Are you using them in connection with your present testimony?

The Witness: No; no.

Mr. Abbott: Then I won't look at them. To save time, these seem to be fairly lengthy, will they be

(Testimony of Adolph G. Sutro.)

available immediately after the noon recess or during the noon recess, and we can go ahead and you can testify now.

Will that be acceptable, counsel, if I inspect them in detail during the noon period?

Mr. Cranston: It is acceptable to me if it is agreeable with the court.

The Court: I don't know if it is or not until I hear further.

Mr. Abbott: Actually, your Honor, I would prefer to read them now, but I did not want to take the court's time to do so.

The Court: Let me see if I can't eliminate the necessity of another continuance. Are you able now to answer counsel's question?

The Witness: Was it as to—— [908]

The Court: I will have it read.

The Witness: Would you read it, please?

(The record referred to was read by the reporter as follows.)

“Q. Well, let's point this inquiry to the period subsequent to July of 1952, when the effluent was no longer discharged into Pilgrim. A. Yes.

“Q. As of that time did you inquire into the cost of a portable irrigation system, or at any later time?”

The Witness: I did not inquire, no.

The Court: The instruments which you have obtained from your files, which you now have, have they enabled you to answer the question?

(Testimony of Adolph G. Sutro.)

The Witness: Yes, your Honor. They are dated prior to the time mentioned in the question.

The Court: We will mark those for identification, then.

The Clerk: That will be 43, for identification.

(The exhibit referred to was marked Plaintiff's Exhibit No. 43 for identification.)

Q. (By Mr. Abbott): Well, did you secure cost data relative to a portable irrigation system prior to the data last mentioned? A. No.

Q. I call your attention to the second paragraph of the [909] letter dated September 15, 1949, from W. R. Ames Company, addressed to yourself, which is a part of a number of papers now marked Exhibit 43, for identification, and ask you what sprinkler lines are referred to in the first sentence of that second paragraph?

A. Mr. Abbott, I have not read this letter since 1949. May I look at it, if you please?

Q. Certainly.

A. Now, would you repeat the question?

Mr. Abbott: The reporter will read it back.

(Question read.)

The Witness: It is the layout shown in red, according to the first paragraph of the letter.

Q. (By Mr. Abbott): Did you discuss with the gentleman writing this letter a sprinkling system?

A. Certainly.

Q. To be used on what crops?

(Testimony of Adolph G. Sutro.)

A. To be used on any crops which were planted on the land.

The Court: You will have to keep your voice up.

The Witness: Excuse me, your Honor.

Yes. After all, Mr. Abbott, you rotate crops.

You don't plant land continually to one crop.

Q. (By Mr. Abbott): What particular crops did you have in mind that would be suitable for sprinkling, Mr. Sutro? [910]

A. This was one of a series of attempts to mitigate damages and bring the land into production, and I don't particularly recall the crops which were in mind. It could be used for bringing up vegetables. It could be used on alfalfa, although it is rather an expensive way of irrigating it.

Q. Isn't a sprinkling system typically a system designed for commercial flower raising, Mr. Sutro?

A. Not this type of system, Mr. Abbott.

Q. Then what crops in particular, other than those you have mentioned, would be used with the use of that sprinkling system?

A. Would or could?

Q. Well, let's make it could.

A. Well, I imagine that almost any crops except flower crops.

Mr. Abbott: I have no further questions at this time.

The Witness: Is this an exhibit, your Honor?

The Court: It is for identification. It is not an exhibit at this time, but it is to be left with the clerk.

(Testimony of Adolph G. Sutro.)

Mr. Abbott: I will want to read it.

### Redirect Examination

By Mr. Cranston:

Q. Mr. Sutro, in answer to one of Mr. Abbott's questions, you stated that Miss Whelan ran a float over the lower field. Can you explain exactly what that involves? [911]

A. Well, it is usually a scraper of some type with what I might say had a long wheel base, so that the blade will fill up the hollows and chop off the top of the high spots and give a fairly level field to irrigate.

Q. Is it a precision instrument, or does it produce a high degree of evenness, or levelness, in the field, if I may use that word?

A. Yes, it is on a—you are referring to making a normal, standard commercial truck crop job?

Q. Yes.

A. Well, then, the first implement you would probably use would be a carry-all, which is an implement suitable for moving rather considerable volumes of dirt. In other words, a float moves a very small amount. So after rough leveling with a carry-all and a bulldozer, you would then put your finish on the job with a float, or what they call a land plane. That is the final implement for leveling.

Q. Was any work done, to your knowledge, by Miss Whelan with a carry-all, or any other implement than the float on this occasion?

(Testimony of Adolph G. Sutro.)

A. Why, no. This was merely a temporary expedient to take out a few of the high spots, to get the water to flow down. It was in no way a job for permanent use.

Q. Now, you were also asked concerning the use of the reservoirs of the dam and the possible savings that might be [912] accomplished, and certain questions were asked concerning the capacity of 1,750 gallons per minute, which was stated to be the maximum that one irrigator could handle. Was your irrigation system designed so as to place upon the land 1,750 gallons per minute, or some other amount?

A. No. The system was designed to handle between five and six thousand gallons of water per minute.

Q. What was the reason for having a capacity of that size?

A. First off, so that in the event of—I dislike using the word “emergencies” that is used so much—but in the event that conditions necessitated immediate application of large quantities of water, why, it would be readily available. If during periods of crop rotation it was desired to plant alfalfa, or some such similar crop, the field could be irrigated at a minimum of labor costs. And, I believe, last—I don’t know whether I mentioned it—that you would also be in a position to employ more than one irrigator; in fact, you would have to be in that position with a ranch that size, employ more than one irrigator at a time, if necessary.

(Testimony of Adolph G. Sutro.)

Q. That is, could one irrigator, working full time, water all of the ranch that you intended to cultivate frequently enough to maintain healthy crops?

A. That question, Mr. Cranston, I would be unable to answer. There are too many variables to allow me to answer [913] it intelligently.

Q. During periods of warm weather, would he be able to do so with, say, hot dry winds?

A. Mr. Cranston, I think I am safe in stating that he would not.

Q. Now, assuming that reservoirs or the dam were not supplied, in addition to the cost of the labor, what other costs would be involved in installing pumps which would pump 1,750 gallons per minute, or any other sum in excess of the 925 gallons per minute which you have stated you intended to pump?

A. I do not believe, Mr. Cranston, I stated 925. I thought I said the capacity that we had figured on pumping the sump in the creek was 925, and, I believe, I said it was between 900 and 925. However, starting in the well itself, going right down to the bottom, you would have a higher lift of water out of the well, because your pumping level goes down in California wells usually in direct ratio to the amount of water which is being pumped. In other words, if your pumping level goes down X-feet when you pump 100 gallons, it will go down 2-X-feet when you pump 200 gallons. So starting at the bottom of the well, I think you would have

(Testimony of Adolph G. Sutro.)

a higher water lift. Then you would be required to buy pumps, more expensive pumps of larger capacity. You would have larger motors, with larger service charges. [914]

Q. By service charge, you mean a charge for electricity?

A. Yes, the stand-by charge. You would be using more horsepower to pump the same volume of water—I mean, more connected horsepower, and would, therefore, not get down as soon into the more favorable power company power charges; and you would also have to have larger pipelines to accommodate the larger flow.

In other words, in one system you operate it to its normal capacity over more or less at a steady rate. This other would be a larger system operated intermittently and would be more expensive.

Q. That is, how many hours a day did you intend to operate the pumps on the system you designed?

A. I might say that in one way you could say continuous operation. However, there is a certain degree of slack allowed for repairs, and such as that, with two of the wells. You are referring to this plan which has been submitted in court?

Q. Yes.

A. On the other well, due to using the power in the shop which is now under construction, to take advantage of the throw-over privileges granted by power companies, the pump is larger than would normally be installed.

(Testimony of Adolph G. Sutro.)

Q. For how long periods would that normally be operated? [915]

A. I think Mr. Abbott has my data sheet, I am sure.

Mr. Abbott: I have only Exhibit 43, for identification, which does not appear to be a data sheet.

The Witness: No, that is not the one. That is the typewritten sheet of mine.

Mr. Cranston: You have the typewritten notes?

Mr. Abbott: Yes, I do. (Handing documents to witness.)

The Witness: Thank you, Mr. Abbott.

Yes, that particular well—would you please read me the question?

(Question read.)

The Witness: Well, that pump was 303 per cent of the capacity, due to the particular conditions under which it functioned. Therefore, it would be operated one-third of the time, a shade over a third.

Q. (By Mr. Cranston): Now, in connection with the questions that were asked you concerning the use of portable irrigation systems, what costs are involved in connection with labor when such a portable irrigation system is used, and how could those be compared, if they can be compared, with the costs involved on the systems you have now set forth?

A. I know—

Mr. Abbott: I will object to that because the witness has already testified that he hasn't inquired into the costs of securing estimates of costs of a

(Testimony of Adolph G. Sutro.)

portable system; therefore, [916] he does not appear qualified to answer the question.

Mr. Cranston: Well, I intended this question to show one reason why he didn't go further into the costs.

The Court: I do not understand your observation, Mr. Cranston. I do not understand what you mean by your statement just now.

Mr. Cranston: Well, my statement was that my thought was that one reason he did not go further into the actual cost of the portable system was that there were certain other features which would make it apparently undesirable to use that system, regardless of what the actual installation cost might have been. I was looking at what these other costs might be.

The Court: I suppose the question propounded by Mr. Abbott was anticipatory to something that he expects to ask some of his witnesses. I think I will sustain the objection at this time, and we will see later on whether it has any relevancy.

Q. (By Mr. Cranston): Mr. Sutro, in the early part of your cross-examination you were asked concerning the pumping of the effluent, and whether part of your intention at any time was to pump the effluent. Can you state to what extent you desired to pump the effluent at any time during the period from the time you purchased the property up until the present time? [917]

A. Yes. I believe I testified in the early part of this hearing that it was not the ambition of my life

(Testimony of Adolph G. Sutro.)

to live on a sewage farm, and also that the closing of Camp Pendleton or abandonment of Camp Pendleton was believed to be imminent. The pumping of the sewage or effluent would have been making a virtue of necessity, which was not at all attractive.

Q. Did you at any time desire to have the discharge of sewage continued?

A. I recall of no occasion.

Q. You were asked concerning the reason you had not installed or commenced to install a system at any particular date. Can you tell the court what information you would have had to have in order to install any particular system at any particular time? That is, what factors would you have had to take into consideration before you could commence work on any system?

A. Are you referring to the questions of Mr. Abbott this morning, which I was unable to answer?

Q. Yes, in which you asked him to state certain additional assumptions so that you could answer the questions. What assumptions or what additional information would be necessary for you to answer such a question?

A. Well, the first information—the first assumption would have to be the date of installation. The second assumption [918] would have to be the Navy plan which was current. The third assumption would have to be how long a time would elapse between the date under discussion until the then cur-

(Testimony of Adolph G. Sutro.)

rent Navy plan was put into operation, in order that you could intelligently calculate the prospective life of a temporary installation.

Q. Did you at any time during this period have all this data available?

A. No. If we had had the data available, the system would have been installed immediately. We attempted time after time, and designed and worked up data sheets, and made inquiries from pump companies on the basis of the information we were able to extract from the Navy as to their intention, but we were never warranted in actually putting the pump in until we knew how long—until we were sure we were permitted to use it.

Q. During this period did the Navy have permission to dredge the channel of Pilgrim Creek?

A. The Navy—

Mr. Abbott: Objection. That question is far too general. The crux of the objection, your Honor, is permission from whom?

The Court: Yes, there were several along there. I do not believe we are going into all of these various property rights that existed along Pilgrim Creek from the outfall in [919] Camp Pendleton down to the confluence with other streams. I am not going into that. Objection sustained.

Q. (By Mr. Abbott): I would limit the question then: Did the Navy have permission from you to dredge the portion of Pilgrim Creek lying within your boundaries during any portion of this period?

A. Yes; and it is a matter of record in this case.

(Testimony of Adolph G. Sutro.)

Q. If the Navy had availed itself of that privilege, would that have had any effect upon any diversion works which you might have previously installed?

A. It would have affected any well we would have put in the creek. It would have affected any diversion works which were in the creek.

The Court: It could not have been effective, though, Mr. Sutro, unless the other property owners along the stream were similarly disposed, could it?

The Witness: I do not understand your question, your Honor.

The Court: I thought it was clear.

The Witness: You said similarly disposed. Disposed to what?

The Court: If you don't understand the question, just say so, and I will clarify it.

The Witness: Excuse me, your Honor.

The Court: Now, there were other property owners who [920] either had or claimed to have an interest in the bed of the stream?

The Witness: Yes.

The Court: You were only one of such?

The Witness: Yes.

The Court: In order to carry out the program of irrigation, an irrigation system, it would be necessary, would it not, to have the others who claimed property rights in the stream to waive whatever rights they asserted and have the Navy be able to give an effective permission, so that you could function according to your desires? Does that clarify it?

(Testimony of Adolph G. Sutro.)

The Witness: If the bed of the stream means the water—

The Court: It means everything in it, when the water is flowing.

The Witness: I know of other claims to the water of the creek.

The Court: Oh, I didn't understand the way you meant your answer. Very well. We will not go into that in this case.

Mr. Cranston: I believe I have no further questions, your Honor.

Mr. Abbott: We have a few, your Honor.

The Court: I think we had better have them, so as to finish with this witness, so that you can go ahead and start [921] with your other witness at 2:00 o'clock.

#### Recross-Examination

By Mr. Abbott:

Q. Mr. Sutro, you testified that at no time did you desire to have the sewage or effluent flowing through your property. Isn't it a fact that on September 4, 1946, you wrote a letter, now in evidence in this cause as Exhibit A of the government, and quoted at pages 286 and 287 of the record of the first hearing, in which you said, in part:

"I am disposed to make a most reasonable settlement of my claims against the Government, and to convert to the farming program outlined above, if I am assured I will be allowed to continue to

(Testimony of Adolph G. Sutro.)  
receive the entire augmented flow of Pilgrim Creek."

Do you recall writing such a letter which provided in part the part which I have quoted?

A. I certainly do.

Q. Now, you testified to having considerable uncertainty as a result of a Navy change of plan, which affected the installation of the irrigation system. Would that uncertainty have affected in any way the layout of the pipes in the fields, Mr. Sutro?

A. Yes.

Q. In what way? [922]

A. It would determine where you were going to connect with your source of water.

Q. In other words, the only effect upon the field layout is an effect upon the connection point with the water source; is that the case?

A. Offhand, that is all that occurs to me.

Q. Would it have any effect upon the reservoirs which you contemplated and the dam which you contemplated? A. No.

Q. Is there any reason why a diversion point could not be created, as your predecessors in title did, subject to removal in the event that the Navy plan so required? A. At whose expense?

Q. The question is, is there any reason why that could not have been done, Mr. Sutro?

A. No, it could have been done.

Q. And what would be the expense of removing the diversion point, if that should become necessary?

(Testimony of Adolph G. Sutro.)

A. Well, once again, what size pumps were involved? How long would their useful life be before they were discarded?

Q. Are the pumps located within the bed of Pilgrim when the augmented flow is being used in the irrigation system?

A. Are you assuming that the augmented flow would come [923] down Pilgrim Creek, and on what do you base that? I mean—I am not asking you a question, Mr. Abbott. Please excuse me. I mean, am I to assume that the augmented flow would come down Pilgrim Creek?

Q. During the period when there was an augmented flow, could it not have been reached by diversion, and that diversion works removed if occasion would arise for their removal?

A. Yes, Mr. Abbott, it could.

Q. Is there anything in the Navy's plan, or the Navy's change of plans, as you knew them, which would have prevented you from drilling wells to tap the underground source of water?

A. I believe we did drill wells, Mr. Abbott.

Q. Well, is there anything in the Navy's plan that would have prevented you from drilling those wells in 1946?

A. No; I presume we could have drilled wells on that ranch at any time the idea struck me.

Q. Now, at the time that you gave the Navy permission to dredge in Pilgrim Creek, were you aware of the possibility that that dredging might interfere with a diversionary effort? A. Yes.

(Testimony of Adolph G. Sutro.)

Q. From the time that you had actually drilled the wells in 1950, was there anything in the Navy's conduct which prevented you from harnessing those wells to the particular [924] irrigation systems that are described in Exhibits 38 and 39? A. Yes.

Q. What?

A. The—just to get my chronology straight, when was this suit filed, so that I don't—

Q. In April of 1950.

A. April of 1950, and your question is, then, as I understand it, was there anything after December 16, 1950—

The Court: We will have the question read, Mr. Sutro.

The Witness: Excuse me.

(The record referred to was read by the reporter as follows.)

"Q. From the time that you had actually drilled the wells in 1950, was there anything in the Navy's conduct which prevented you from harnessing those wells to the particular irrigation systems that I described in Exhibits 38 and 39? A. Yes.

"Q. What?"

The Witness: The statements in Judge Weinberger's court by Mr. McCall that it was a discretionary act; the refusal of Mr. McCall twice in open court to give us assurance that the pollution would cease; the failure to answer Mr. Cranston's letter when we were trying to save a growing [925] alfalfa crop—the crop was there, it was a beautiful crop,

(Testimony of Adolph G. Sutro.)

we were attempting to save it, and the letter remained unanswered; the instructions of Mr. McCall to Colonel Robertson when the Marine Corps was willing, in fact, the Marine Corps had drawn up an agreement to cease pollution; and I believe other statements by Mr. McCall in open court in which he refused to give us that assurance.

Q. (By Mr. Abbott): Mr. Sutro, what did you contemplate that Mr. McCall or the government could possibly do to interfere with your use of the water from the wells drilled in 1950 for the alfalfa, which was suffering from lack of water, as you say, or for any other purposes?

A. Would you just—would you mind breaking that question up into separate parts?

Q. Certainly. What action by Mr. McCall or by the government could have interfered with the use of the water from the wells in irrigating the alfalfa?

A. Nothing. That was a straight question of economics, and it was covered rather completely in my letter of March 30th, I believe, 1950, a part of which was read in court yesterday, or the day before. It was a question of: Would it have paid?

Q. Why wouldn't it have paid, Mr. Sutro?

A. May I refer to that letter?

Mr. Abbott: Yes, I would like to see it. I don't know [926] the letter to which you refer.

The Court: Is that the letter to Mr. Deutz?

The Witness: Yes.

Mr. Cranston: It is in the transcript.

Mr. Abbott: Do you have the page?

(Testimony of Adolph G. Sutro.)

The Court: I don't know as the whole of it was read.

Mr. Cranston: It is in the transcript at page 354, I believe, Mr. Sutro.

The Court: The court does not have a copy of that transcript. I am speaking from recollection. It may be in the clerk's office. If it is, Mr. Clerk, will you bring it in this afternoon?

The Clerk: Yes, your Honor. I will try to ascertain if we have everything.

The Court: Counsel thinks it was copied in *in extenso*.

The Witness: May I read—shall I read this, Mr. Abbott?

Mr. Abbott: Well, I am referring to it at the present time.

Yes, you may read the portion that you feel constitutes an answer to the last question, Mr. Sutro.

The Witness: Would you be so kind as to read the last question?

(The record was read.)

The Witness: A large part of this was read yesterday and [927] is in the record, so I will not read it a second time, if that is satisfactory.

The Court: Well, unless Mr. Abbott wants an answer to his question.

Mr. Abbott: The witness has indicated, your Honor, that the best way he can answer is to point to a particular provision of the letter. If he can readily do that, that is satisfactory.

(Testimony of Adolph G. Sutro.)

The Witness (Reading): "Of course, if construction under their latest scheme is started by the Government and if it is not abandoned when half completed, I may be able to rent a pump to put in the new well. I may be able to have the power company extend their lines in time to prevent losing the alfalfa crop if I would obligate myself for a three-year contract for power which may never be used and I may be able to obtain pipe and build a temporary distribution system and a reservoir for the water in order to save the alfalfa and mitigate damages."

Q. (By Mr. Abbott): Then you contemplated that all of those things were possible at that time?

A. The pump could have been installed.

Q. And it could be used for its entire useful life with the wells and with the irrigation system that you have described in court, and illustrated in Exhibits 38 and 39, for an indefinite period, regardless of the [928] conduct of the government; isn't that a fact?

A. Wait until I break that down. The pump—is your question: The pump could have been installed in the well and the entire system could have been constructed and used for an indefinite period of time? First of all, the entire system could not have been constructed in time to save the alfalfa crop.

Let's see. Yes, the system could have been installed, if that was going to be the system.

Q. And nothing that the government would do, or could do, short of condemnation of your land,

(Testimony of Adolph G. Sutro.)

would interfere with the operation of that system for an indefinite period; isn't that the fact, Mr. Sutro?

A. What is your definition of interfering with the operation?

Q. You would have a serviceable irrigation system, which could be used year in and year out, irrespective of the conduct of the government; isn't that a fact?

A. I would have an irrigation system, but I would be unable to keep anyone on the ranch while the water remained polluted. I would be unable to keep equipment on the ranch.

Q. Are you presently drinking bottled water in your own residence? A. Do I what?

Q. Are you presently drinking bottled water in your [929] own residence?

A. Yes, I do. I haul it from my own ranch. I prefer it to the bottled water the bottled water people sell, so for my own use I bring water from my own ranch for drinking water.

Mr. Abbott: I have no further questions.

Mr. Cranston: I do have one more.

#### Redirect Examination

By Mr. Cranston:

Q. The purpose of any irrigation system is to supply water to the land; is that correct?

A. That is correct.

The Court: Isn't that a self-evident matter?

Mr. Cranston: That is preliminary, your Honor.

(Testimony of Adolph G. Sutro.)

The Court: Very well.

Q. (By Mr. Cranston): The crops which can be grown would vary with the nature of the water which was delivered, whether it was pure or polluted; is that correct? A. Yes.

Q. The system that you would install in case of polluted water would be the same or different from the system you would install for the use of pure water?

A. No, the system we would install for the use of polluted water would be cheaper than the system we would install for pure water. [930]

Q. But that system could not thereafter be used for the purposes for which a pure water system would have been used; is that correct?

A. Not as satisfactorily, no.

Q. At any time during this period did you expect that the pollution would continue for an indefinite period in the future? A. No.

Mr. Cranston: That is all.

#### Recross-Examination

By Mr. Abbott:

Q. In what way would the system that would be used for polluted water be cheaper than the system used for pure water?

A. You would not need to put your laterals so close together, because using the polluted water, you would figure on a forage crop where large volumes of water could be applied quickly. In vegetable crops in that neighborhood they usually

(Testimony of Adolph G. Sutro.)

irrigate by the furrow system, and the furrows, due to the smaller amount of water applied, are much shorter. For that reason laterals in a vegetable field would be closer together, or should be, for a satisfactory arrangement than in an alfalfa field.

Q. Of course, if the vegetables being grown were for seed with polluted water, the system would be the same, wouldn't it? [931]

A. If you could grow vegetables for seed in that district successfully.

Q. And if you contemplated a termination of the pollution, it would have been feasible, would it not, to have put in the scheme contemplated for using it for all of the crops which could be grown with polluted water?

A. You mean, if I had contemplated an immediate or reasonably soon termination of the pollution, that you would then have put in the system more particularly suited for vegetables, and use it in the interim for alfalfa crops?

Q. Yes. That would be the fact, would it not?

A. Yes, if I had so contemplated.

Q. Didn't you so testify a moment ago?

A. I do not recall it. Are you referring to the contemplation regarding the cessation of the pollution?

Mr. Abbott: I have no further questions.

Mr. Cranston: Do you wish to explain your last answer?

The Witness: I have no recollection that I contemplated the immediate cessation of the pollution.

The Court: The record will show what he said, gentlemen.

Mr. Cranston: Yes. That is all.

The Court: 2:00 o'clock, gentlemen.

(Whereupon, at 12:20 o'clock p.m., a recess was taken until 2:00 o'clock p.m. of the same date.) [932]

Tuesday, March 2, 1954—2:00 P.M.

The Court: Proceed, gentlemen.

Mr. Cranston: Mr. Anderson, please.

THOMAS E. ANDERSON

called as a witness by and on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

The Clerk: Your full name?

The Witness: Thomas E. Anderson.

Direct Examination

By Mr. Cranston:

Q. Your name is Thomas Anderson?

A. Thomas E. Anderson.

Q. What is your occupation or profession?

A. I am a real estate broker in land only.

Q. Can you state what your experience has been in that connection? That is, where did you attend school?

Q. Well, I attended school in Kearney, Nebraska. I graduated from high school in Kearney,

(Testimony of Thomas E. Anderson.)

Nebraska. I attended the—I graduated from business college in Des Moines, Iowa.

Q. Where did you locate after that?

A. In Burley, Idaho.

Q. And when did you come to California?

A. In 1916.

Q. Where did you locate at that time? [933]

A. Imperial Valley.

Q. How long did you remain in the Imperial Valley? A. We moved to San Diego in 1920.

Q. And have you lived in San Diego since that time? A. Yes, sir.

Q. What has been your occupation since that time?

A. Real estate broker; farm lands only.

Q. Have you at any time owned any property in San Diego County?

A. I have; still own property.

Q. What type of property? A. Land.

Q. Is it city land or country land?

A. Country land.

Q. Have you done appraisal work in connection with ranch properties? A. I have.

Q. Has that involved ranch properties in San Diego County? A. That is correct.

Q. Over what period of time did you engage in such appraisals? A. About 34 years.

Q. During that time have you appraised for agencies of the United States Government? [934]

A. I have.

Q. Have you appraised for individual persons?

(Testimony of Thomas E. Anderson.)

A. I have.

Q. Have you appraised for banks?

A. I have.

Q. Could you name one or two banks you have appraised for?

A. Well, mostly, I presume, the Security Bank of San Diego.

Q. Have you appraised for condemnation actions? A. Yes, sir.

Q. Have you testified in various actions which have been tried in the Superior and the Federal courts? A. I have.

Q. Have you examined the property which Mr. Sutro owns, which is located near Oceanside in San Diego County? A. I have.

Q. Have you examined the soil characteristics of that property? A. I have.

Q. Will you state what you observed in that connection?

A. Well, my opinion of the soil, the predominating is Hanford sandy loam and Greenfield sandy loam.

Q. What is the character of that soil with [935] reference to the growing of vegetables?

A. It is considered one of the very best.

Q. Have you observed the climatic conditions of that area, and are you familiar with them?

A. It is a very high-class district in there. The cultivation is, I would say.

Q. During the time that you have lived in San Diego County, and during the time that you have examined this property, have you been familiar with rental values in this vicinity?

(Testimony of Thomas E. Anderson.)

A. Yes, I have had occasion to—in fact, I have had occasion to adjust some of them.

Q. Now, did you note on Mr. Sutro's property areas which have been delineated on Plaintiff's Exhibit 32, and marked thereon as Field No. 11, Field No. 4, Field No. 7, Field No. 5, and Field No. 6?

A. Yes, I have gone over all of them.

Q. In your opinion, what would be the rental value of those properties during the years from 1946 to the present time, assuming that the water supply for those properties had not been polluted or contaminated?

A. Well, I based my real valuation on this entire appraisal on the fact of the cheap water conditions, and in comparison with other water tables in the balance of the valley, and the cost of operation in the valley land, and [936] the cost of operation on this particular place, as given to me.

Q. And what is your opinion of the rental value during the period to which I have referred?

A. I want to make myself very clear on this. I am basing it entirely upon the cost of water. I have based it on the 90-some acres in there that they have given me at \$100 per acre, and the other portion at \$75 per acre.

Q. Well, so far we have only referred to the portions I have referred to—

A. To the 90-some acres, that is correct.

Q. —as the 97 acres. Then is it your opinion that all of the 97-acre area within all the fields I have mentioned, the rental value for each acre from

(Testimony of Thomas E. Anderson.)

1946 would be \$100 per acre for each rental year?

A. That is correct.

Q. Now, calling your attention to the areas which have been marked on this map as Fields Nos. 10, 9, 8, 3, 2, and 1. Have you examined those areas also?

A. I have; which is approximately, I believe, 50 acres.

Q. Yes. In your opinion, what was the rental value of that area, assuming an unpolluted water supply, from the years 1950 to the present time, that is, beginning with the year 1951?

A. \$75 a year. [937]

Mr. Weymann: I didn't get that answer.

The Witness: \$75 a year.

Q. (By Mr. Cranston): Now, assuming, Mr. Anderson, that the land to which you have referred did not have a pure water supply, what would be the value of the first group of fields, the 97-odd acres?

Mr. Abbott: I will object to that, unless counsel defines "pure water." As we found in the first trial, that is a very relative term, and there are varying degrees of impurity of water, and the court has only found a particular type or defined degree of impurity here.

The Court: I believe the witness is entitled to have defined the type of water that is characterized as pure water.

Q. (By Mr. Cranston): Assuming, Mr. Anderson, there was either no water supply or a supply

(Testimony of Thomas E. Anderson.)

which was polluted with sewage effluent, so that it could not be used for the growing of human edible crops——

Mr. Weymann: Just a moment. We object to that question as being compound and assuming a fact not in evidence. There is no evidence here that there has been no water supply.

The Court: It is a compound question, I think.

Q. (By Mr. Cranston): I will rephrase it this way, then: Assuming that the only water supply had been polluted with sewage, so that it was not available and could not be used for the growing of human edible crops, what would be the rental [938] value of property under those conditions?

A. Well, it could have been rented for dry farming.

Q. And what would be the rental value of the property for dry farming?

A. Well, it is considered in San Diego County that barley is one of the most profitable crops that you can raise dry farming, because it is an economical crop to put in, and the prices are fair, and I think most of our dry farming is principally barley in San Diego County.

Q. And what would have been the rental, the reasonable rental value of the property for such purposes?

A. Well, that has always been based upon a share basis. I don't know a parcel of land in San Diego County that was ever rented on a cash basis; usually

(Testimony of Thomas E. Anderson.)

one-fourth to the owner, and three-fourths to the farmer.

Q. In your last answers were you referring to land used for dry farming?

A. That is correct.

Q. What would be the estimated yield, in your opinion, from such land, if it had been rented on a dry farm basis?

A. Well, the average yield, dry farm yield, in San Diego County varies from six sacks to 15 sacks to the acre, and it depends entirely upon the ground. This is classified as A-1 soil, and I gave it—I would put it at the top peak, 15 sacks to the [939] acre.

Q. And what would be the average price, then, which this barley could have been sold for during this period, upon which to compute the monetary return from 15 sacks per acre?

A. Well, I took that up with the Poultry Association, which are perhaps the largest buyers in San Diego County of all grains, and they estimated the average price from '46 to '53, was \$2.90 per hundred.

Q. Now, would the price—the rental value of the second group of fields, constituting approximately 50 acres, if used for dry farming be the same, or would it be different?

A. It would be on the same basis entirely.

Q. Would the yield be the same?

A. I would say exactly the same.

Q. And, of course, the price would be the same?

(Testimony of Thomas E. Anderson.)

A. Would be the same.

Q. Did you note the wells which were on the property during the course of your examination?

A. Yes, I did.

Q. You may cross-examine.

### Cross-Examination

By Mr. Weymann:

Q. Mr. Anderson, are you a member of any professional organizations?

A. San Diego Realty Board.

Q. Any others? [940]

A. Did you mean clubs?

Q. No, professional organizations.

A. No, the San Diego Realty Board.

Q. How long have you been a member of that?

A. Oh, I think ever since it has been organized in San Diego.

Q. You appraised ranch properties for quite a few number of years. Will you tell us some of the properties that you appraised?

A. Yes. No. 1, I can go back to the appraisal of the Lawrence Oliver tract, which was condemned by the government, of a thousand and some acres, on which I appraised the property and was their chief witness in the appraisal there.

Q. When was that?

A. Oh, you have asked me an offhand question. I cannot give you the exact date.

Q. Well, approximately. I am not trying to pin you down.

(Testimony of Thomas E. Anderson.)

A. Oh, I would say it goes back at least to 12 years ago.

Q. Twelve years ago. And what crop was raised on that ranch?

A. Oh, he had a hog ranch on it, and a dairy ranch.

Q. A hog and a dairy ranch. Did he raise any edible crops on it? [941]

A. No; grain mostly, and dry farming, mostly.

Q. Dry farming, mostly?

A. That is correct.

Q. No alfalfa? A. No.

Q. Or beans? A. No.

Q. Where was that located?

A. Well, that would be in the Camp Kearney district, now, where Miramar is located.

Q. Now, what other ranch properties have you appraised?

A. Well, I have appraised the Winston property in the San Luis Rey Valley, which is a tributary to this property that I am putting an appraisal on today.

Q. And how many acres in that?

A. 440 acres.

Q. How long ago did you appraise that?

A. Oh, I would say about four years ago; maybe five.

Q. And what was raised on that?

A. Well, they had 111 acres in vegetables.

Q. Yes?

A. Perhaps about—offhand, I would say around

(Testimony of Thomas E. Anderson.)

100 acres in dry farming; the balance, pasture.

Q. The balance in pasture. Any other properties?

A. Yes, plenty of them I guess. Perhaps I had better [942] refresh my memory. Some of them go back quite a ways. One property I appraised here for the Los Angeles Furniture Company, Roger Goodin. At that time his property was, oh, a thousand and some acres, which adjoins the Fenita ranch, which was a Spanish grant, and that was a thousand, or, I believe, 1040 acres. And I appraised the Harris property.

Q. Before we leave the Goodin ranch, was that a subdivision property?

A. No; no, it was not. It was a ranch. They still own it, and they run a few head of cattle on it.

The Court: Where is that, Mr. Anderson?

The Witness: The Fenita is—do you know where Santee is?

The Court: Yes.

The Witness: Okay. It is about three and one-half miles this side of Santee, and about four miles up Sycamore Canyon. It just about adjoins the Fenita. They have large holdings in there. It would be about four miles—you go in by way of Pala way, or you can go in the other way.

Q. (By Mr. Weymann): And the Goodin ranch was a cattle ranch, you say?

A. That is right.

Q. How long ago did you appraise that?

A. Oh, I would say six or seven years ago, that one.

(Testimony of Thomas E. Anderson.)

Q. Any others that you wish to refer to? [943]

A. Well, let's see. I am trying to get those that are close in there. The Harris ranch, at that time, an 1800-acre ranch. That is up on the San Luis Rey River, but it is up about six or seven miles west of the Henshaw Dam. That is principally a cattle ranch.

Q. How far is that from the subject property, would you say?

A. From this property here?

Q. Yes. A. At least 35 miles, I would say.

Q. Is that in San Diego County?

A. Yes, sir.

Q. And when did you appraise that?

A. Oh, about three years ago, I would say.

Q. And you mentioned that one of these, the Oliver property I think, you appraised for condemnation purposes? A. That is right.

Q. How about the Winston, and the Goodin, and the Harris property?

A. That was appraised for estate purposes.

Q. For estate purposes. And that is true of the other three?

A. Yes, that is quite true, except the Harris ranch, and that was appraised for a selling value.

Q. No, in connection with your investigation of sales, [944] market value of property, rental value of property, just what investigation did you make for the purpose of testifying here?

(Testimony of Thomas E. Anderson.)

A. Well, you mean on this particular ranch?

Q. Yes, the subject property.

A. Of course, I know most of those ranches in that entire valley, and I double-checked with owners of land, I checked with property virtually adjoining this property, except where Foss Lake divides it, and I checked in the Vista Irrigation District, where they are raising celery, and the cost of water, and I checked in the Fallbrook district, and also down as far as the Chula Vista section, which is perhaps one of the best celery sections in Southern California.

Q. Now, are you familiar with a sale from A. M. Dunn to Mr. Murdy in 1950?

A. You mean on this particular piece of property?

Q. No, on property in the San Desquito River Valley.

A. Oh, yes, I know the property very well. In fact, I was interested in a part of the sale of it.

Q. Yes. When was this property sold?

A. This one particular piece was sold three years ago.

Q. Three years ago? A. That's right.

Q. Do you know what the acreage was?

A. Well, it was sold in different parcels. There was one parcel of 300 and some acres. That was sold before the [945] balance of the ranch. Oh, I think there was about 400 and some acres left in the balance of the Dunn property in there. There were two different sales made on it.

(Testimony of Thomas E. Anderson.)

Q. Are you familiar with the Caroline Spalding sale? A. No, I am not.

Q. That is a sale made in 1948. You are not familiar with that. Are you familiar with a sale made by Morris Glick to Ed and Robert Panke?

A. I am not familiar with it. I probably know the land, but not at that—

Q. It is at the intersection of Pala Road and Highway 395.

Q. Highway 395 and—

A. The Pala Road.

Q. Pala Road. Do you know that?

A. I know the district quite well.

Q. But you are not familiar with that?

A. No, I am not.

Q. Are you familiar with the sale by Edgar S. Dulin to Malcolm P. Cameron?

A. Well, I am familiar with the Dulin ranch; very familiar with it.

Q. But you are not familiar with the sale or the terms?

A. No. In fact, I didn't even know he had sold any [946] portion of it.

Q. Were you on that ranch? Did you examine that? A. I have been all over it.

Q. Never for the purpose of ascertaining its market value, though, were you?

A. Well, I had it listed for sale at one time.

Q. How long ago did you have it listed for sale?

A. That goes back to just before Mr. Dulin bought the property, but he has had it for quite a few years.

(Testimony of Thomas E. Anderson.)

Q. Are you familiar with a sale by Lillian Josephine Dawson to Theodore W. Wackerman?

A. I am not.

Q. Are you familiar with a sale by Wackerman to Anatole M. Joseph? A. I am not.

Q. Are you familiar with the sale or the purchase of Mr. Zanhiser's property?

A. I am not.

Q. Do you know where the Zanhiser property is located? A. I do not.

Q. Would it help you to identify it if you were told that that was the adjoining property to the Sutro property?

A. No, I wouldn't even know it by that name at all.

Q. Did you investigate the methods of farming operations on any of the adjoining ranches? [947]

A. Well, I have been quite familiar with them practically for years, with the operation.

Q. Am I to understand, then, you depended on your familiarity over a course of years?

A. Well, I don't know how you are giving me that question. Do I know how the ranches are operated up there or—

Mr. Weymann: Will you read the question, please.

(The question was read.)

The Witness: The fact is that I know quite a few of the ranchers up in there, and I know their operations in vegetable raising, and so forth. If

(Testimony of Thomas E. Anderson.)

you mean that, why, sure, I am quite familiar with it.

Q. Are you familiar with the method of operation on the Zanhiser ranch? A. No, I am not.

Q. You made no investigation, then, I take it?

A. I am not familiar with it.

Q. Are you familiar with the sale made by George W. Beermaker, Inc., a sale made by George W. Beermaker, Inc., to Elias Zanhiser?

Mr. Cranston: When was that sale made, Mr. Weymann?

Mr. Weymann: That sale was made in 1945.

The Witness: The valley stuff in there, really, I am very frank in telling you—the valley land has gone up so terrifically high, that I have really kept away from that [948] district entirely, because I have been busy in the other end of the valley more than I have been in this end, because they are talking subdivisions, and everything else, in this end of the valley, which I am not interested in.

Q. (By Mr. Weymann): I see. You have kept away from this end. When you say "of the valley," now let's clear that up.

A. The San Luis Rey Valley is quite a large, extensive valley.

Q. Well, then, did you make any investigation of leases?

A. Yes, I have. I have talked with Mr. Stokes, who has one of the adjoining places, and he raises celery. In fact, they have over 200 and some acres in there that they operate. And I have talked with

(Testimony of Thomas E. Anderson.)

Davies, who farms 40 acres, practically all in celery and other vegetables.

Q. Pardon me. I thought you were finished. Where is the Davies property?

A. Well, it is on virtually the same road going up to the Sutro property. You might say in that district. It is in the valley, nevertheless.

Q. Yes. Any others?

A. Yes. I have talked with—well, in fact, I covered that entire territory pretty well. But these were the important things: I took into consideration more or less [949] the adjoining property, and also I took into consideration the Winston property, which is one of the largest ranches in that vicinity in the way of vegetables, and, probably, to me, gave me one of my best ideas as to the cost of water and operation.

Q. You did not consider the Zanhiser property as a significant thing?

A. No, I can't even locate the property.

Q. You can't even locate the property?

A. Not by that name.

Q. Are you familiar with a lease made by Dr. Wilbur M. Myers to the Atlas Company?

A. I am not.

Mr. Cranston: When was that lease made?

Mr. Weymann: That lease was made in July, of 1953.

Q. (By Mr. Weymann): Are you familiar with a lease made by Mr. Panke of a part of the Panke ranch to Ed Tribolet, 150 acres?

(Testimony of Thomas E. Anderson.)

A. No, I am not.

Q. Are you familiar with a lease by Mr. Panke to Jones and Cavanagh?

A. I am familiar with it. I know the property, and that's all.

Q. What was that?

A. I know the property, but I didn't know anything [950] about the lease whatsoever.

Q. You did not investigate that lease?

A. No, I did not.

Mr. Cranston: When was that lease made?

Mr. Weymann: That lease was made in 1952.

Q. (By Mr. Weymann): In order to save time, would your answer be the same to all of the leases made by the Panke interests, a part of their interests?

A. Yes. I am not familiar with their leases at all. They operate them themselves.

Q. Are you familiar with a lease made by Mr. Cameron to Jack Carrillo in 1952?

A. No, sir.

Q. Did you investigate any of the Camp Pendleton agricultural leases?

A. No, sir, because I don't know what that covers now, you understand. I covered that entire district down below there, and talked with probably eight to ten different landowners, and the principal ones I took were the larger holdings, like the Stokes and the Winston properties.

Q. Where is the Stokes property located?

A. How is that?

(Testimony of Thomas E. Anderson.)

Q. Where is the Stokes property located?

A. It is right below—adjoins Foss Lake, right below this property. [951]

Q. What was raised on that property?

A. Principally celery and—well, they had celery, and chili beans, and, of course, when I was over it the first time they had a great deal of cabbage there. But they have about 200 acres there that is operated.

Q. What was the source of water supply for that? A. Wells.

Q. Wells on the property. Any dry farming conducted on that land? A. Not that I know of.

Q. What was raised on the Davies property?

A. Vegetables entirely.

Q. How many acres? A. Forty.

Q. And where was that property located with reference to the subject property?

A. Well, it would be south and west of this property.

Q. How far?

A. Oh, I would say two miles; maybe two and a half.

Q. What was the source of the water supply there? A. Well water.

Q. Well water. And the Winston property, where is that located?

A. Well, that would be above the Davies property, I would say about four miles. [952]

Q. Four miles from the subject property?

A. From the Davies property, on Highway 76.

Q. And how far would that bring it from the

(Testimony of Thomas E. Anderson.)

subject property, from the Sutro property?

A. Oh, I don't know. Offhand, I would say probably four or five miles.

The Court: Is that property up the San Luis Rey Valley?

A. Yes. It is right on the river.

Q. (By Mr. Weymann): Do you know of a lease made by Camp Pendleton to the Beggs Brothers Fruit Company? A. I do not.

Q. Do you know of a lease made by Camp Pendleton to Pablo Castro?

A. I do not. I don't even know the property. I don't even know where the property is located.

Q. I see.

A. Camp Pendleton is pretty big country.

Q. A part of it is in the Valley, isn't it?

A. Yes. A lot of it is in the Santa Margarita Valley, too, which is the largest of all.

Q. Now, I believe you testified on direct examination that the rental value of the 97 acres included in fields Nos. 11, 4, 7, 5, and 6 was, in your opinion, worth \$100 an acre? A. That is right.

Q. Per annum. And that the remaining portion was [953] worth \$75 an acre?

A. That's right.

Q. That is assuming that the water is unpolluted. Was that estimate based on what you tell us is your general knowledge of the district, or on an investigation of leases of comparable properties?

A. I based it entirely upon the leases of other properties, less the cost of the water. I based my

(Testimony of Thomas E. Anderson.)

value of \$100 an acre upon the water that can be delivered on this property, at a much lesser price,

Q. Investigation of other properties as to which you have testified here? A. Pardon?

Q. On the other properties as to which you have testified here, which you have examined?

The Court: You had better clarify that, Mr. Weymann.

Mr. Weymann: I will withdraw the question as I originally framed it.

Q. (By Mr. Weymann): That opinion, Mr. Anderson, is that based on your investigation of these other properties to which you have referred?

A. That is right.

Q. And if a further investigation of still other properties, some of which I have called to your attention, would disclose other leases and other sales, would that have [954] any effect on your opinion?

A. If they had the cheap water that this place can deliver, it certainly would change my views.

Q. What has been your experience as to the relation between the rental value of property, that is, as an over-all figure, between the rental value of property, farm property of this kind, and its market value?

Mr. Cranston: Is that limited, Mr. Weymann, to land in this area?

Mr. Weymann: To land in this area, yes.

The Witness: You mean as to the value of the land?

(Testimony of Thomas E. Anderson.)

Q. (By Mr. Weymann): As to the value of the land.

A. Well, I don't think you could make any comparison on that in the San Luis Rey Valley, because they hold their land there from \$1,500 an acre up, and no matter what rental you get out of it, it is pretty hard to determine the right kind of a profit on a rental basis, because it will sell for more than what the income would justify.

Q. And is that true throughout that valley?

A. I think it is practically true all through Southern California.

Q. Well, I won't argue with you on that. Now, your valuations were based on certain figures, \$100 for 97 acres, and \$75 for the remaining part of Fields 11, 4, 7, 5 and 6, and those rental values, in your opinion, were they consistent [955] throughout the years 1946, '47, 48, '49 and '50?

A. I did not go back to '46.

Q. I believe you testified 1946, as I understand.

A. That the rental value was such?

Q. Yes.

A. Oh, I based my appraisal as of 1946, and the rental value as of that date. I thought you had reference had I made any investigation around this vicinity on what land was renting for, these same properties, in 1946. If you are, I can't answer that.

Q. And—

A. On rental. Pardon me.

Q. Upon what investigation, then, did you base

(Testimony of Thomas E. Anderson.)

your opinion that those rental values remained constant?

A. Well, the rental values that I gave you is what exist today. The rental values, in discussing it with people that have rented their farms, they run practically the same. But I have tried to give you—to make myself clear that these rental values that I took into consideration are as of today.

Q. As of today?

A. But as far as back to '46, with the people I have talked with, they run virtually the same. In fact, they got a little higher rentals a while back than they have in the past year or so. [956]

Q. That is, do I understand that they got higher rentals in past years?

A. Yes, because it has been leveling off a great deal on the cost of what they are getting for their produce.

Q. Wouldn't the rental value depend upon the character of the crop?

A. Oh, definitely.

Q. And it would depend upon market conditions?

A. At the time of making the lease, it would.

Q. Pardon?

A. At the time of making the lease, it would depend entirely upon the market value.

Q. And for how long were those leases usually made?

A. Well, I have noticed some of these leases only run for one year. Some are running for three years. Now, the lease on the Winston property has

(Testimony of Thomas E. Anderson.)

been going on for about 12 or 14 years.

Q. The same rental?

A. It was raised a little; not a great deal.

Q. Would you say that that was an exception to the—

A. No, I think it is a good average.

Q. —an exception to what I understood you to say was a downward tendency?

A. Well, there is a leveling off.

Q. In arriving at your valuations of \$100 and \$75, [957] respectively, for these several fields, how did you arrive at those valuations?

A. Well, the most important factor in San Diego County is water, because water is where you find it, and when you have got the water, that is the most important factor in raising vegetables, or any other type of farming, where you irrigate it. So I have taken an analysis of the average cost of water in the San Luis Rey district, that is, in this particular district, and I have double-checked with the Soil Conservation, and I have double-checked with the Department of Agriculture, and with other irrigation districts.

Now, you take the Vista Irrigation District, I know of land, when there was celery there, at \$100 an acre, and they paid \$25 an acre for their water, that is, district water, and we all know that the average amount of water used is between four and five feet. If it is sandy soil, why, they use a great deal more. And the average pumping in the San Luis Rey Valley, it has dropped down to a low level.

(Testimony of Thomas E. Anderson.)

In fact, some of those wells are pumping 35 and 40 feet below sea level right today, which is bad, and they have had to put in auxiliary pumps, which has increased their overhead on their water. And about the cheapest water I have found in that entire district has been what they consider \$10 an acre-foot. The average price in there for the producing of that water runs from \$15 a foot, up to as high as \$25 a foot, per [958] acre-foot.

Now, then, I have based my appraisal upon the fact that they have given me a price of \$4 per acre-foot on this water.

Q. You say on this water?

A. That is correct.

Q. What property do you mean?

A. On the Sutro property. So no matter which way you look at it, you are saving practically \$10 an acre-foot on your water, and if you use even five acre-feet of water a year, you will save \$50 an acre just on your water alone, which certainly cuts your rental values way down.

Q. Well, is your appraisal, or, rather, your opinion of the water available on the Sutro ranch predicated on water in Pilgrim Creek, or in wells, or both?

A. Well, mine was entirely based upon the fact that he has the wells already drilled, and based upon the production of the wells. I would say mine was based entirely upon his wells, and not Pilgrim Creek.

Q. Based entirely upon wells?

(Testimony of Thomas E. Anderson.)

A. That is right; because he has three wells in there, and his water is—I measured them, and they were within 10 feet of the surface when I measured them at that time.

Q. Well, do you know, or did you investigate, Mr. Anderson, what crops Mr. Sutro or his tenant, or any of his tenants, grew upon his ranch? [959]

A. Well, I never discussed it so much with Mr. Sutro, but I have discussed it with the neighbors in there, and they have told me that they have seen marvelous celery grown upon this property, and good vegetables, and, of course, my opinion of the soil would say it should be a No. 1.

Q. When were those vegetables grown, do you know?

A. Well, it was—understand, I never saw them, but they tell me around, prior to 1946.

Mr. Weymann: I move to strike that. Evidently this is pure hearsay.

The Witness: That is right.

Mr. Cranston: If the court please——

The Court: Most of it is hearsay, isn't it, in this line of evidence?

Mr. Weymann: Well, what the neighbors told him prior to 1946—while we admit there is considerable leeway in expert testimony of this kind, I think this goes a little beyond the limit.

The Court: Well, all he did was to name the individuals. Suppose he just said he heard. Wouldn't that be the same? I think it is a little more definite. I think instead of its being objectionable, it seems to

(Testimony of Thomas E. Anderson.)  
me it is a little more helpful to know who the individuals were. Motion denied.

Mr. Weymann: Very well.

Q. (By Mr. Weymann): Mr. Anderson, who were the neighbors [960] with whom you have discussed it?

A. With Mr. Strokes, who is a landowner, and his mother, who is also a landowner and rents her property, and with Mr. Davis, and, the most important of all is the Winstons.

I talked with several other renters in there. They were, naturally, of foreign descent, and so I just paid no further attention to their names, or anything of that kind. I was just taking a general average to see how things checked up, but everything checked. In fact, they checked up the way I have given them to you.

Q. Now, when you refer to the most important of all, you referred to the Winstons, whose farm was located—

A. Well, it is a large piece of land, and I think it gives more the general information that covers larger and heavier investments.

Q. Now, do you know what crops Mr. Sutro's tenants raised after 1946?

A. I do not. I can see where they had that alfalfa on the ground, because the borders were still there, and some old alfalfa sticking around.

Q. But you don't know what alfalfa was raised there, and how much? A. I do not.

Q. Do you know how much—did you make an

(Testimony of Thomas E. Anderson.)

investigation as to how much of that Sutro ranch was available for [961] pasture land?

A. Well, of course, it has all been pasture land, you might say, since 1946. I would offhand say that because it hasn't been operated. That is, it probably had a certain portion of it that I know nothing about, nothing whatsoever. It could have been pasture, and it could have been dry farmed. There is no doubt about it.

Q. You familiarized yourself with the climatic conditions in that valley. Did you take into consideration the annual rainfall?

A. Well, the rainfall really means very, very little, when you come to vegetable growing or raising alfalfa. It doesn't enter into the picture, because we do have a normal rainfall up there, as I understand, of around 'about—normally around 18 inches.

Q. The normal rainfall is about 18 inches. Have you any recollection or made any investigation as to heavy rainfalls which produced floods?

A. Oh, we have them every once in a while.

Q. That is, you have them periodically, do you not?

A. We haven't had any for a long time. I wish we had.

Q. As a matter of fact, didn't you have one in the season of 1941-1942?

A. Well, we had a little moisture at that time. Yes, we have had some heavy runs, some heavy floods, there is no [962] question about that.

(Testimony of Thomas E. Anderson.)

Q. Heavy enough to flood a good part of the lowland there, wasn't it?

A. Oh, I have seen it entirely flood the lowlands.

Q. On the Sutro property?

A. No, no. That is way above the river bottom.

Q. Did you make any investigation as to what this property would rent for for the growing of beans or alfalfa?

A. Well, No. 1, as far as beans are concerned, beans become rather a—it is a crop that requires a great deal more work operation than barley raising, and then you have got to have your rains just right for beans, or you don't get anything. Barley has always been considered the most profitable dry land crop that we can raise, unless you are in the lima bean section, and it was not. I presume they could raise lima beans there, perhaps, but the land was never prepared for it, and that is intense cultivation and constant work in operating for beans of any kind. Your land must be in perfect condition. If it is barley, it is a very cheap crop to come in, and it has been a very profitable crop as far as dry land farming is concerned.

Q. Did you investigate the possibility in the rental which may be produced from the growing of alfalfa on this?

A. Well, I would definitely say it is not a practical country for alfalfa, because it is ideal for a pasturing [963] matter, where you can pasture it all. But whenever you create an overhead to raise al-

(Testimony of Thomas E. Anderson.)

falfa hay, anything of that character, and in the fog belt, where you cannot raise No. 1 hay, well, I would say definitely it is not a ranch of any type for producing hay for the market, for good pasture.

Q. Is this property in the fog belt?

A. Yes.

Q. Is that a detriment to the producing of hay?

A. Absolutely. It colors your hay, and if you want No. 1 green hay, you have got to keep the fogs off of it.

Q. Does it affect any other crop?

A. Well, it will affect a great many crops perhaps. Our fog is very beneficial to a lot of them, too. You take fogs, they will affect—like wheat, and that type, why, you are apt to get rust, and it will hit oats, such as that, and you are more apt to get rust from the fogs than anything else.

Q. Did you investigate the capacity of the wells on the Sutro property?

A. I investigated the wells. I measured them only, because I had to take the word of Mr. Sutro on the production of these wells.

Q. Now, Mr. Anderson, when you expressed your opinion as to the diminution of the rental value of this property by reason of the pollution of Pilgrim Creek and the wells, did you base that on the assumption that the land was not suitable [964] for the production of any crop?

A. Oh, I put it in my report. I classified the dry land farming, and what the vegetable land would

(Testimony of Thomas E. Anderson.)

have been by itself, and what the dry farmland would have been valued at by itself.

Q. How much of that land, in your estimation, was suitable for the growing of vegetables?

A. Well, I am basing it on 140 acres—the 90—or, it would be 147 acres plus.

Q. Did you, in arriving at your valuation, take into consideration the cost of putting the water on those 147 acres?

A. I took into consideration the cost of delivering the water; not the cost of putting in any of the systems whatsoever.

Q. Let me ask you: Are you in a position to say, then, whether or not the putting in of the 147 acres into vegetables would or would not be an economical operation?

A. Well, I would say it would be a very profitable operation.

Q. Isn't it a fact, Mr. Anderson, that there is a relatively high water table under other lands in the valley, including those which you have examined, in which there is a high water table with equally cheap water?

A. Well, in the valley the water table is very low, [965] practically; in fact, it is dangerously low, because where they were lifting water at 30 and 35 feet, today they are lifting it from 100 to 120 feet in places. Now, up in this particular district, all I could say is the water table, as I measured it in the two wells, stood within 10 feet of the surface of the ground.

(Testimony of Thomas E. Anderson.)

Q. What was the condition that obtained in the adjoining farms that you had investigated?

A. You mean the condition of the farms?

Q. No, the water table.

A. Oh, the water table. They have got a pretty strong lift, even right below Foss Lake there, they lift around 35 to 40 feet.

Mr. Weyman: That is all, Mr. Anderson.

#### Redirect Examination

By Mr. Cranston:

Q. Mr. Anderson, you were asked as of the date of which you determined values, and you stated that you determined rental values as of today. What did you mean by that statement?

A. Perhaps that was misunderstood to this extent: The people that I contacted, I gave you what the properties were renting for today. In fact, one rental—I will mention Mr. Stokes' name; perhaps I shouldn't—he was offered \$90 an acre for a portion of his place, but he couldn't deliver [966] it because he had another party that had a year's rent to go on it, and he said, "I can rent"—

Mr. Abbott: We object, your Honor, unless the particular transaction is identified, and I only heard the witness say one party.

The Court: Yes, he has identified it as Stokes.

Mr. Abbott: I am sorry. I may have missed a part of the record.

The Witness: And so he said a matter of two or three years ago, he said, we could have gotten a

(Testimony of Thomas E. Anderson.)

higher value for our land than we can today, because all produce of every kind, I think especially vegetables, and I think celery, celery used to be considered one of the most profitable crops we could raise, but it is also a big gamble, and the matter of when everything was at its peak, why, there seemed to be more activity in buying, the market was faster, but the produce buyers today are a little more skeptical about buying, so, therefore, there has been a tendency downward in place of an upward trend.

Q. (By Mr. Cranston): In your opinion, then, would the rental values in 1946 or during the intervening years have had a definite relation to the rental values at the present time?

A. Yes, I definitely do. That is the reason I took the period as a whole. [967]

Q. Do you believe there has been any significant change during that period?

A. I don't think there has been such a great deal. There has been a change, because a matter of two or three years ago there was perhaps three and four persons wanting to lease, where there is only one today. There is that difference.

Q. You were asked if you had observed what crops have been grown on Mr. Sutro's property recently. Will you state, in your opinion, what vegetables could be grown upon the particular acreage as to this rental value you have testified to?

A. Well, on account of the soil, there is no question about the soil standing the very highest test for any type of vegetables. I, naturally, when I

(Testimony of Thomas E. Anderson.)

went over the property, considered it a No. 1 celery soil, I considered it a No. 1 bean soil, I mean string-beans, I figured it was excellent for chili peppers, and, in fact, tomatoes. I know those hills are A No. 1 —it is A No. 1 tomato land.

Q. You were asked questions concerning floods. Is the Sutro property peculiarly susceptible to floods, any more so than other agricultural property in the vicinity?

A. No, not so much, because all of the San Luis Rey Valley, the same as the Mission Valley, is always subject to floods.

Q. What effect does the presence of fog have upon the [968] growing of vegetables, such as celery?

A. Well, I don't think it affects celery so much, no. In fact, I don't think—it does color the leaves, that we all know, but so far as the celery part itself, it doesn't have any bad effect whatsoever.

Q. You stated that below Foss Lake there was a lift of 35 to 40 feet. To what did the 35 to 40 feet have reference? Was that the ground level, or the sea level?

A. That was their water table.

Q. Their water table.

A. Of course, they pull their water from way down below that; in fact, down below in the valley there, they put it down below the 100 foot level; 135 feet, some of it.

Q. Then to clarify it, is the 35 to 40 feet which you referred to below Foss Lake, is that the water table as compared with the 10 foot water table to

(Testimony of Thomas E. Anderson.)

which you referred on the Sutro property? Are those figures analogous?

A. Well, it could be. I don't think they have got the water supply there, from what they tell me, but their lift probably will average around maybe 100 feet; but their water table is around 35 feet.

Mr. Cranston: Yes. That is all, unless you have some further questions. [969]

#### Recross-Examination

By Mr. Abbott:

Q. Mr. Anderson, you have testified that you found Greenfield sandy loam, and Hanford sandy loam on the subject property. Did you observe any other soil types there?

A. Yes. There is a Foster type soil in there, but they are so near alike in productivity that I just classified them as a No. 1 soil. After all, the names really signify its location, and most all of our soils come from a sandy loam formation and a clay formation and such as that, because the Foster type loam soil and the Hanford sandy loam type, there is practically no difference in the productivity of it.

Q. Did you find any Alviso loam on the property? A. Yes, there is some.

Q. Where was that?

A. You find those in the washes, mostly.

Q. Did you find any Huerraro fine loam soil on the property? A. Yes.

Q. Where was it?

(Testimony of Thomas E. Anderson.)

A. It is in the bottom, but that is mostly a wash. I think that is more of a general wash condition, that has a good subsoil underneath, and it is nothing like any river bottom sand whatsoever.

Q. What other soil types did you find, Mr. Anderson? [970]

A. Well, I really stopped at the—to me, it most all run, as an average, the majority of it, from the Hanford type up to the Greenfield type, and the other I was not so much interested in going over it. In fact, a lot of that rough stuff, I didn't go over whatsoever.

Q. You mean portions of the land were not investigated by you; is that your answer?

A. Well, the stuff that is not involved in what I appraised. I didn't appraise any of the other stuff on the outside. It is just the 97 acres and the 50 acres. That is the portion I was interested in, and that I did go over very carefully. But the balance of the ranch, which was not involved, I didn't pay much attention to it.

Q. Did you find any Botella sandy clay loam in the areas which you did investigate?

A. Oh, some; a little bit. Small patches.

Q. Where was it?

A. It was down near the—give me that question again, to be sure I am right.

(Question read.)

A. Yes.

(Testimony of Thomas E. Anderson.)

Q. Now, did you find any of the Montezuma clay adobe type soil on the property?

A. The Montezuma clay adobe is not prevalent in that vicinity. That is mostly over in the Otai district, and the [971] Montezuma type comes from a formation that is cut with lime. I think there is an adobe formation in there, but I really don't know of any Montezuma adobe in there whatsoever.

Q. Did you consult the County Assessor's soil map in connection with your investigation?

A. I did not.

Q. Would your opinion be affected in any manner if you were to ascertain that the County Assessor's map does show Montezuma clay adobe?

A. Well, it wouldn't make any difference because there was no Montezuma clay on the soil that I appraised. There could be some Montezuma adobe in there, but, after all, oftentimes even our county is wrong on their maps when it comes to soil. But Montezuma adobe is—

Q. Did you see any of the Ysidora sandy loam soil on the subject property?

A. I don't even know what it is.

Q. In general, are Montezuma clay adobe and Ysidora sandy loam inferior soils, Mr. Anderson?

A. Montezuma adobe is excellent soil, but you have to be very careful in handling it. But the Montezuma soil is used mostly for dry farming, and especially for lima beans.

Q. By the way, I don't think you have given

(Testimony of Thomas E. Anderson.)

us the total acreage of the property that you appraised. What was that? [972]

A. Ninety-seven acres plus, and 50 acres plus. It would be 147 acres plus.

The Court: He gave that, Mr. Abbott.

Mr. Abbott: He did, your Honor. I was in error.

Q. (By Mr. Abbott): Have you consulted the soil map used by the San Diego County Farm Advisers in reference to this particular property?

A. Yes, I have referred to it. I double-checked. I double-checked my own statement.

Q. Does it show any of the soil types other than the ones that you have mentioned?

A. Yes, it showed some Foster type loam soil in there. But even these maps, and even the government reports, are not all definite. We probably have the most diversified class of soil in San Diego County of any place in the United States, because it is a different type—you jump from one to the other. But I am speaking of it as a whole. It sure has some Foster loam type soil, but as I explained to you before, there is practically no difference in productivity in Foster type loam or Hanford sandy loam soil. They are two very fine soils.

Q. Weren't there some additional soils you haven't mentioned yet today?

A. Perhaps; could be. But not in the 147 acres. There could be a little—sure, there could be some little [973] parcels in there. As I say, our soil is very, very spotted, but taken as a whole, that is

(Testimony of Thomas E. Anderson.)

what it would be classified, no matter who looked it over.

Q. Have you investigated the operating history of all of the wells on the subject property?

A. I have not.

Q. Have you made any inquiry to ascertain whether or not the wells on the higher ground silt up from time to time?

A. Well, I think that could happen to any well in the country. I have trouble with my own well doing that right now.

Q. Do you know whether or not there is a history of that occurring on the subject property?

A. No, I do not.

Q. Would that tendency have any effect upon your appraisal of the lease value of the property?

A. Well, the important thing, I am basing it entirely upon one thing, that the water is there. If the water isn't there, then my appraisal is all wrong.

Q. Then if the well silted up, impeding, or reducing, or eliminating the availability of water, that would affect your appraisal?

A. No, because that could be cleaned out very quickly.

Q. Have you investigated to ascertain whether there has been any history of salting of the wells on this subject [974] property?

A. Not on this property whatsoever, but they are down below.

Q. How far down below?

(Testimony of Thomas E. Anderson.)

A. Salt has been coming up for several miles up and down the San Luis Rey River.

Q. What is the closest point to the subject property on which that has occurred?

A. It goes up way beyond—it goes up the valley three or four miles above this property. This property is way above the valley line entirely.

Q. You say the salting occurs three or four miles above this property?

A. No, in the San Luis Rey Valley. That is the only place the salt is showing up.

Q. Have you conducted any investigation to find out whether or not that has been happening up there?

A. Yes. I took that up with the farmers up there, and even with the Chamber of Commerce, and they are all worried about it.

The Court: I think we will suspend for a few minutes now.

Mr. Abbott: Very well, your Honor.

(Short recess.)

The Court: Proceed, gentlemen. [975]

Q. (By Mr. Abbott): Mr. Anderson, I believe you testified on direct examination, and also on cross, that your appraisal of rental value of this property was very much affected by the fact that there was only a 10-foot lift required in bringing water to the surface of the wells on the Sutro property.

A. No, I didn't say that.

Q. Well, correct me if I have misstated you. In what way was my statement incorrect?

(Testimony of Thomas E. Anderson.)

A. I said that the water can be delivered at so much per cubic—so much per acre-foot; that I did measure the water, and the water stood within 10 feet of the surface, but I did not make the statement that they could pump water without lowering it from that point.

Q. Where did you get the \$4 per acre-foot figure that you mentioned?

A. As I told you, that came entirely from the statement that Mr. Sutro could deliver the water at that, and it is up to him to prove it.

Q. It was Mr. Sutro's statement?

A. That is right.

Q. Did you ascertain what the level of the water was when the wells were being operated?

A. No, I did not. That is still up to him.

Q. Now, which is the important consideration in [976] determining the value of land? Is it the standing level of the water? A. No.

Q. Or is it the drawdown level?

A. No. The cost of putting that on the land, which was given to me at \$4 per acre-foot, that is what I am basing my appraisal on.

Q. Did you agree with that estimate?

A. I have no reason to be to the contrary.

Q. Now, in appraising real property—

A. (Continuing): Yes, I know you can deliver the water for that.

Q. You do?

A. That is according to other wells. I happen to know something about that in this particular

(Testimony of Thomas E. Anderson.)

vicinity, because I happen to have a couple of wells of my own, but I don't know how—he has to put the water on this land at \$4 per acre-foot, and that is where I based my \$100 per acre valuation on.

Q. Do you feel you are qualified to state whether or not that is a correct estimate of the cost of putting the water on the land? A. No, I am not.

Q. In appraising land, do you from time to time consider water availability in determining how much the land is worth? [977]

A. Oh, absolutely.

Q. And when you do that, do you ascertain how far the well must pump in order to deliver water to the surface?

A. I take the man's statement. Then if there is anything to the contrary, then, naturally, I always put it up to the buyer that this is the statement of the owner.

Q. Well, we are not selling real property.

A. I am basing the same thing on this.

Q. Well, how much of a drawdown is consistent with that value or price of \$4 an acre-foot to produce?

A. Oh, I think you could put it down to probably the 75-foot level.

Q. And still produce it?

A. Yes, we do, without any doubt.

Q. I see. Then what is the difference between this property and the property farther down the valley, where you testified to a drawdown of 35 feet?

(Testimony of Thomas E. Anderson.)

A. Well, their water table has dropped down to practically nothing. In many places in the San Luis Rey Valley they have had to go down and down to follow the water.

Q. But in many places they go down to 35 feet; isn't that right?

A. They have a water table of 35 feet, and that is the statement I made. Water is where you find it. This water I am speaking of is above the river bottom, so it comes [978] from some other source. It does not come from the river bottom for most of the ranches of the San Luis Rey Valley. Their water comes from the valley itself.

Now, they have been going down, and they have been hitting sea water, so they have gone down 35 feet below sea level, and they are afraid to go down further, for fear they might hit salt water.

Q. At any rate, you have never ascertained the drawdown rate on the subject property?

A. I have not. I am just taking the statement that he could deliver that water for \$4 per acre-foot, and that is what I am basing my opinion on.

Q. Did you also accept Mr. Sutro's valuation of the rental value over the six years in question?

A. No, I did not. I never talked to him about it.

Mr. Abbott: Your Honor, it may be pertinent at this time to call the court's attention to the drawdown figures appearing in the notes of the plaintiff, Exhibits 42 and 41, which range from 80 to 91 feet.

Q. (By Mr. Abbott): Do you know when the

(Testimony of Thomas E. Anderson.)

wells on the Sutro property were drilled, Mr. Anderson? A. I do not.

Q. Now, in testifying to your opinion of rental value, you assumed that those wells were on the property during the entire time that you were appraising rental value? [979]

A. Well, either way. It would make no difference to me whether they were put on there a week, or two or three months, as long as they can produce that water. I was only interested in water, and that is the only thing I was interested in, and that is what I based my appraisal on, is the fact they have the water to deliver on this land at so much per acre-foot. That is what I based my appraisal on, and I had no other way of determining any other value whatsoever, or any other basis.

Q. Would your appraisal of the fair rental value in 1936 be any different if there was but one well on the property in that year, and it was on the high land part of the property near the old house?

A. Well, we would not be taking in as much territory as we are today, because at that time they were only irrigating a certain portion of the ranch, and only, I think, about 90 or 97 acres. Now we are talking about 147 acres.

Q. Precisely.

A. Now, I don't know—at that time, I understand from the testimony that has been given, they had an abundance of water there to produce crops

(Testimony of Thomas E. Anderson.)

from their well and from Pilgrim Creek. I have no other way of—

Q. Well, you haven't answered the question, which was: Would your opinion be different if there was but one well on the property in the year 1946? [980]

A. You mean if there was only one well there today?

Q. No, sir, in the year 1946.

A. Well, it would be based—it wouldn't be on the 97 acres. It would be just the same, because they were irrigating that, and they had the water they claimed for that. So I based it absolutely the same, because the water was already there, it had already been farmed, and had been farmed to vegetables. So they apparently had the water for that 97 acres at that time out of Pilgrim Creek and out of Well No. 1.

Q. How about the balance of the acreage which you have appraised?

A. That came in after he had drilled these other wells.

Mr. Cranston: Mr. Abbott, his testimony on that was limited to the year 1951 on the additional 50 acres. He did not testify the additional 50 acres could have been irrigated prior to 1951.

Q. (By Mr. Abbott): I take it from your last answer, Mr. Anderson, that your estimate of the availability of water is based in part on the volume of water flowing in Pilgrim Creek during the years prior to 1951?

A. Right.

(Testimony of Thomas E. Anderson.)

Q. Have you ascertained the amount of water which flows in Pilgrim Creek, exclusive of the amount of effluent from the sewage disposal plants?

A. None whatsoever; just based upon the fact that if [981] this land was farmed to vegetables, and they had sufficient water to operate the ranch, my valuation is based on those facts only, and I knew nothing about where the water comes from, except they took it out of Pilgrim Creek and out of Well No. 1, and they said they had sufficient water to farm and operate the ranch. Therefore, my appraisal is based entirely upon that.

Q. Calling your attention now to the map, which is Plaintiff's Exhibit 32, and which map reflects areas 1, 2, 3, 8, 9 and 10, as to which you have given a uniform valuation of \$75 per acre for each of the years in question— A. '51 to '53?

Q. Yes. Now, do you find that the rental value of each of those several areas is the same, Mr. Anderson? A. Well, I based it as a whole.

Q. You mean certain of the areas have a higher rental value and certain of the areas have a lower rental value?

A. I would, yes, because it has to be put in a productive state, and, therefore, why, naturally the value could not be put up as high as it is on that that had already been farmed.

Q. How about area No. 3—focusing on that area alone? A. Now, let's see. What is area No. 3?

Q. Have you computed separately the rental value— [982] A. Yes.

(Testimony of Thomas E. Anderson.)

Q. ——of that area during the period in question?

A. That is based, yes. That is based on the \$75 an acre basis.

Q. So you assigned a rental value of \$75 per acre to area No. 3?

A. No, I put it as a whole, not as a unit, because some of that has got to be worked down and put into shape in order to make it adapted to producing crops. There is some of this has not even been farmed—it has been farmed perhaps at one time, but to raise vegetables, there are some erosions in there that have to be taken care of. They are minor, but I took the whole thing as a whole, not as an individual parcel, and put the estimate on the entire 50 acres. There is some of that where there has to be a great deal more work done than on the other.

Q. Well, is your estimate of the rental value based upon work not yet done?

A. How is that?

Q. Is your estimate of the rental value based upon work not yet done?

A. Absolutely. That is the reason I put it at \$75.

Q. In other words, you are testifying to what the rental value of the property might be if certain improvements were effected; is that it? [983]

A. Well, it has to be put in a state of cultivation to grow vegetables, yes.

(Testimony of Thomas E. Anderson.)

Q. Well, do you have any separate appraisal or rental value of area No. 3?

A. No, I classified it all as a whole. There is only one—what is it—it is 1.9 acres. Now, that is a small acreage. If you or anybody else could figure out what that would be worth by itself, it would not be worth anything by itself.

Q. How about area No. 2? Have you a separate estimate of the rental value of that area?

A. Well, that is another small parcel of 2.77 acres. If you would classify that by itself and value it by itself, sure, I would not give it any consideration, but I am taking it as a whole.

Q. Is it economically feasible to farm either of those areas?

A. Yes. The land is all right. I went over every parcel of it.

Q. Then you do not agree with Mr. Tedford's opinion that those two areas cannot be economically or feasibly farmed?

A. It can be; sure, it can, but I say there is more work to be done on some of those than there is as a whole. Definitely, it could be farmed. It is a good piece of soil. [984]

Q. You don't think the gradient of the land has any bearing upon its rental value in that area?

A. The what?

Q. The gradient of the land.

A. Well, I don't know how to answer that. The fact of the matter is—I would say no.

Q. Now, in testifying to your opinion as to

(Testimony of Thomas E. Anderson.)

rental value during the years in question, did you assume that there were any irrigation facilities on the land, other than those which were in fact on the land?

A. Well, they had the irrigation ditch there, and they had the pipeline on top of the mesa, which I naturally observed, and they had the water up there and at one time under cultivation, which I know, because it has been so testified in your court.

Q. Then did you consider those facilities to be adequate? A. No, absolutely not.

Q. But they were adequate to produce a rental of \$100 per acre on a part of the land?

A. No. Well, at that time they were kept up, they were in condition to operate, but when I saw them, they were in no condition to operate.

Q. Were they in condition to operate during the years 1946 to 1952? [985]

A. They must have been. They were farmed. They were operated at that time.

Q. During that period, then, were those facilities adequate to irrigate the land for the crops which you contemplated in forming your opinion?

A. Oh, definitely, as far as that portion of the land is concerned, yes.

Q. Which portion of the land?

A. The 90-some acres.

Q. Well, in other words, the existing irrigation system was adequate to irrigate for the vegetables which would produce the rental value, would it?

A. From the testimony that has been given, and

(Testimony of Thomas E. Anderson.)

from the statement that I had, they had an adequate water supply from Pilgrim Creek and from Well No. 1 to irrigate the entire 97 acres plus, because it had already been farmed and farmed to vegetables.

Q. My present question is directed to the irrigation facilities, not to the adequacy of the water. Were those facilities in the years 1946 through 1952 adequate to grow vegetables upon the acreage you had appraised?

A. I never saw the vegetables grow there, but the fact is they have testified they grew the vegetables there, so I definitely say yes.

Q. And you are basing your testimony as to fair rental [986] value upon the assumption that those facilities were adequate?

A. Definitely. Sure, they had to be definite, or they could not have operated and farmed it to vegetables.

Q. By the way, there is only one road that goes up to the Sutro ranch, isn't there, from Oceanside?

A. There is only one I ever saw.

Q. Yes. Now, as you were driving up that road, and driving inland, did you pass fields of alfalfa on the way? A. Yes.

Q. Some of those fields have been there for a good many years, haven't they?

A. Yes. I think so, yes.

Q. Are they in the fog belt?

A. Yes, they are in the fog belt, but they mostly use that for pasturing purposes.

(Testimony of Thomas E. Anderson.)

Q. Is it your testimony that the alfalfa grown in that area we have just described is not baled and sold for hay—

A. It is not No. 1 hay. You can't raise No. 1 hay in that entire vicinity.

Q. My question is, is that hay being baled and sold commercially, to your knowledge.

A. To my knowledge, I have never heard of any of it being sold.

Q. Do you know what crops are grown on the Whelan farm? [987]

A. No, you have got—I can't answer that.

Q. Do you know whether alfalfa is grown on the Whelan farm?

A. Does that join—what place, and perhaps I can tell you. I don't know it as the Whelan farm.

Q. Now, can you explain to the court, Mr. Anderson, why you chose dry crops as a basis for estimating rental value under assumed conditions of polluted water?

A. No. 1 is, I understand that with the polluted water you could not use the water in any sense of the word for anything pertaining to public consumption and for human consumption.

Now, as far as grain is concerned, why, I have been advised for even raising alfalfa hay, you couldn't raise the green feed and feed it to the cows, because that goes directly to the human consumption there. But you could raise the cured hay, and sell the cured hay, and you could raise

(Testimony of Thomas E. Anderson.)

any other type of dry land crop, and it would not be affected by the polluted water.

Q. Now, if there were no such limitation upon the use of the land for alfalfa grown with the water in question, would you have formed a different opinion as to the highest and best use of the land with the so-called polluted water?

A. I do not mean to say that alfalfa is not a profitable crop, because I am a great believer in alfalfa. But we [988] also know, as a whole, that you can't very well use the pumped water for alfalfa purposes and make hay out of it, because it becomes a very expensive operation and would not be profitable, I don't think, in any sense of the word. So that you could not compete with places like in the Imperial Valley, and, No. 1, they cannot raise No. 1 hay anywhere near the coast where they have fogs, because fog colors your hay, and when you color your hay, it is not merchantable hay as far as No. 1 hay is concerned.

Q. Suppose the hay is cut green?

A. You can't feed it to the cattle then, because you are licked again on account of the polluted water, because that is the way farmers are farming. Farmers operate that way. Now, they feed their alfalfa green.

Q. Your assumption—or, correction—your opinion as to the highest and best use of the land is based in part on the assumption that the alfalfa grown on the land could not be sold for animal consumption?

(Testimony of Thomas E. Anderson.)

A. The hay can, but not the green. The hay can be sold for animal consumption, but not the green feed.

Q. And your last statement constitutes one of the assumptions upon which your opinion is based; is that correct?

A. Well, my opinion is it would be too expensive to raise alfalfa hay for that one purpose, for selling hay.

Q. Would it be too expensive to raise it for feeding [989] to animals, if that is permitted under the law?

A. If you could feed it green, yes, it is excellent, but not if it is dry, because you still have got an expensive operation there per ton in producing the hay.

Q. Now, are flowers grown commercially in northern San Diego County?

A. Oh, somewhat.

Q. It is one of the major crops in that area, isn't it?

A. No, I don't think so. I wouldn't say that, not by any means. It has been a hobby with a lot of people, and they have been going into it quite a bit, I will say that, on small scales.

Q. Could flowers have been grown upon the acreage which you appraised?

A. Yes, I don't think there is any doubt about it.

Q. What would be the fair rental value of the acreage for the year 1946 if planted to flowers?

(Testimony of Thomas E. Anderson.)

A. I don't think you could have rented it. I don't think it would rent—if you went out to look for a person today, somebody that wished to raise flowers. I have talked with a lot of these people raising flowers, and it is more of a hobby to them. There has been one or two people, I think, in San Diego County that have gone into it commercially, but it is still a hobby. I don't think—you might rent five or ten acres, you might rent 25 or 30 acres, but [990] as a farm, no, you couldn't rent it for flowers. I think it would be humanly impossible.

Q. Well, aren't there substantial acreages in this valley which are being currently rented for the commercial production of flowers?

A. Yes, perhaps. I don't know how many acres; maybe 40 acres. I don't know. I know there are flowers being raised up in there, but it is still a hobby, you might say. You take the poinsettia-farm at Carlsbad. That is the biggest acreage of flowers I know of in Southern California.

Q. So your testimony then is that the land has no rental value for the purpose of planting flowers or renting it for the purpose of planting to flowers?

A. I definitely say it would have no commercial value whatsoever as far as the entire acreage is concerned. I don't think you would ever find a renter for it.

Q. Was this land suitable for wet pasture during the period from 1946 to 1952?

(Testimony of Thomas E. Anderson.)

A. Yes, if the State Board of Health would let you pasture it.

Q. Now, in giving your opinion as to the rental value of the land during that period, assuming what we are calling polluted water, did you assume that the land could not be used lawfully for wet pasture during that period?

A. Yes, I did, definitely. [991]

Q. And that assumption is material to your opinion as to fair market value?

A. I took it, the most profitable crop that I know of, as I said before, all over San Diego County is barley.

Q. The most profitable crop?

A. That is correct, and that is what you would have to classify all of that, as a dry crop proposition, because to raise barley and irrigate it would be another thing that I never heard tell of, because it would be too expensive an operation.

Q. Well, will the barley produce higher rental during the period in question than would flowers grown commercially?

A. Oh, I don't think so. I think flowers probably would demand a big rental.

Q. Would the barley during that period produce a higher rental than would the use of the land for wet pasture?

A. As I said before, if you could use it for wet pasture, it would be the finest thing in the world.

Q. Well, let's assume that.

A. Well, I couldn't assume it, because they said

(Testimony of Thomas E. Anderson.)

the water was polluted, and it couldn't be used for wet pasture or green feed. It could not even be fed to dairy cattle and the milk sold for human consumption. So that is what I based my facts on.

Q. What would be the fair rental value of the property [992] during the years in question when planted to black-eyed beans?

A. There comes another question, about your raising black-eyed beans. That is not a cheap crop to raise. You have got to work your land into a very high type of cultivation, and you have got to plant it at a certain time of the year, and your rains have to come just at a certain time, or you get nothing. You are lucky if you get two or three or four sacks to the acre.

Mr. Abbott: Will you read the question, Madam Reporter, please?

(The question was read.)

The Witness: One-fourth the crop.

Q. (By Mr. Abbott): And how much would that yield over the years in question?

A. As I say, the black-eyed beans that I saw last year, the best I saw would average around five to six sacks to the acre.

Q. The question is a question which relates to the average yield on a share basis over the six years from 1946 to 1952, when planted to black-eyed beans.

A. I don't think anybody could make a statement on that, because it depends entirely upon your

(Testimony of Thomas E. Anderson.)

rainfall conditions; and while barley doesn't necessarily have to depend on that. We have always raised a pretty good barley crop, even during this period of dry season we have been having. [993]

Q. And assuming that the black-eyed beans are being grown on the Sutro land during that 6-year period, with water which has been loosely called polluted, which has a certain precise meaning for the purpose of this hearing, but assuming that water is being used to irrigate the black-eyed beans, then what is the fair rental value?

A. Well, cash rental, I would hate to say, but it would certainly produce the beans.

Q. It would produce the beans?

A. Well, there is no question that with irrigation it would produce anything.

Q. And what sort of a yield would that be per acre per year?

A. Oh, I would say around 20 sacks.

Q. And how is that, translated into dollars?

A. I don't know the value of beans today. I couldn't answer that.

Q. Did you consider this line of analysis in determining the fair rental value?

A. No, I did not, because to operate that as a bean proposition, if you could have farmed it, that is an entirely different thing. I have never gone into that, but it would be an expensive operation even at that, because if they wanted to raise black-eyed beans, I don't know of but a very few places in Southern California that they ever irrigate [994]

(Testimony of Thomas E. Anderson.)

them, because, after all, you are putting expensive water again onto a cheap crop, that you don't get a very big production on.

Q. Well, I think you have said, or at least that you are informed that this \$4 per acre-foot water was about the cheapest water available.

A. That's right. I wouldn't say yet whether you should farm it to beans or not.

Q. In any event, you have never made any study to determine the economic feasibility of farming it to beans, have you? A. Absolutely no.

Mr. Abbott: If the court please, at this time the defendant moves to strike all of the evidence of the witness relating to valuation of the land or valuation as to fair rental value on the ground he has not shown that degree of familiarity with the property, with its history, with its uses, with comparable transactions, with all the agricultural facts and opinions which are required in order to ascertain the fair market value. In particular, he has shown virtually no knowledge of the transactions in the neighborhood, both of sale and of lease, and his opinion as to the property is expressly made largely in reliance upon the owners' representation as to the availability of water, which representation is inconsistent with the figures which the owner has here produced [995] in court. I find nothing in the record which will substantiate an opinion which this court may consider.

The Court: Motion denied.

Mr. Abbott: That is all.

(Testimony of Thomas E. Anderson.)

Redirect Examination

By Mr. Cranston:

Q. Mr. Anderson, you were asked concerning the assumption of facilities to irrigate the property. I understand—correct me if I am wrong—that you did assume, in so far as the entire acreage which you appraised is concerned, that facilities would be provided to deliver water to that entire area; is that correct? A. That is correct.

Mr. Abbott: May I move to strike the answer for the purpose of objecting to the question?

The Court: Yes.

Mr. Abbott: The question assumes an erroneous state of the record. The witness has testified that his opinion was based upon an existing irrigation system, not upon facilities to be put in.

Mr. Cranston: If I may—

The Court: I don't think so. The answer will stand.

Q. (By Mr. Cranston): You appraised, or you gave an opinion as to the rental value of the 50 acres for a period of three years only; is that correct? [996] A. That is correct.

Q. Were you advised that prior to that time facilities would not have been available for the irrigation of that 50 acres? A. Prior to 1951?

Q. Yes, that is my question. A. Yes.

Q. You were asked concerning the use of areas 1, 2 and 3 for the growing of crops, and were asked concerning the gradient in these areas. I call your attention to the topographic map which is before

(Testimony of Thomas E. Anderson.)

you, and ask you if the gradient—first I will ask you what do the figures represent, 60, 65, 70, 75, for example, in Field No. 2?

A. That is the grade, the elevation.

The Court: Speak a little louder, please.

The Witness: It is the elevation between the different levels.

The Court: The contours?

The Witness: The contours.

Q. (By Mr. Cranston): Do those contours indicate a steep or a gentle rise?

A. Oh, they would indicate a very gentle rise.

Q. That is in Field No. 2?

A. That is in No. 2, yes.

Q. Now, in Field No. 1, do they indicate a steep or a [997] gentle rise?

A. Well, I would say a very gentle rise.

Q. And in Field No. 3, do they indicate a steep or a gentle rise?

A. That is a very gentle rise, too; very slight. I know I walked all over those.

Q. In other words, is the slope in those areas too steep to permit the growing of vegetables?

A. With contour irrigation, absolutely no.

Q. You were asked whether you had put a valuation upon those fields separately, and stated that you had considered them as a unit with other fields.

A. That is right.

Q. What caused you to group them with other fields?

A. Well, the parcels were small parcels to begin

(Testimony of Thomas E. Anderson.)

with, and the other acreage was the principal acreage, and the majority of the larger tracts were much easier to put into a high type of cultivation, and, therefore, I didn't particularly put a great deal of value to this, except it tied in with the other acreage.

Q. Is the rental value of those fields affected by the fact that they are adjacent to other fields which could be rented?

A. Well, I would say yes. It is—no, it is in no way affected by that, I don't say that at all, because the [998] land is there, the soil is there, and the availability is there, and it ties in with the other acreage as given to me, and I simply classed it as a whole, not as each individual separate property because if I did, I perhaps would put this at one price and some of this other on a higher basis, but I simply put it on an average of the entire tract as a whole.

Q. You were asked concerning various soils which were present on this property. Was there any Diablo soil present in any part of it?

A. Well, as I said, there are several mixed soils up in that country. We have it all over the county. Sure, there is perhaps a little clay, a little adobe, in portions of the place, but very, very limited, of the adobe there is. There is no question about the value of it, because it is excellent land if it is properly handled. But that is very limited.

Q. With respect to the growing of flowers, have there been any rentals of acreages of 97 acres, or

(Testimony of Thomas E. Anderson.)

140 acres, or any areas of any similar magnitude in northern San Diego County, to your knowledge, for that purpose?

A. I could say no on that, because they are all spotted parcels, and mostly hobby, except with two different ranchers, and they specialize in them. But the rest of them are mostly hobby people.

Q. Is the growing of flowers a specialized matter? A. Definitely so. [999]

Q. Is it more difficult to grow flowers than it is to grow vegetables?

A. Oh, definitely, it is. They are temperamental, just like everything that goes with it. You have got to know just how to handle them.

Q. Mr. Anderson, you were asked upon recross-examination concerning the drawdown of the water in Mr. Sutro's wells. The figure of 35 feet to 40 feet which you gave in connection with the wells below Foss Lake, was that prior to drawdown, or considering drawdown?

A. No, that was before the drawdown.

Mr. Cranston: That is all.

#### Recross-Examination

By Mr. Abbott:

Q. One question on the last point: What was the drawdown on those properties below Foss Lake?

A. Well, the one statement I had, they drew down to 100 feet.

Q. And what is the name of that ranch?

A. The Stokes ranch.

(Testimony of Thomas E. Anderson.)

Q. Do you know the drawdown on any of the other ranches in that area?

A. Well, I talked with Mr. Davies, and his drawdown—well, he is pumping water at the 125 or 135 foot level, I wouldn't be positive just which. [1000]

Q. Does contour irrigation type farming of vegetables ordinarily, in your opinion, on this land, will that produce an annual rental of \$75 per acre?

A. Most of our rolling land is contour farmed, and hill land, and some of that is the best vegetable land we have. Contoured farming is not much more difficult than the other, when your land is properly laid out.

Q. But is the rental value, when the vegetables are grown with contour farming on this land, as high as \$75 per acre?

A. Yes, I know several places where they have been getting it. In fact, Colonel Atkinson's place in this same vicinity, he told me he had his rented for \$75, 50 acres of it farmed to vegetables, two years ago.

Mr. Abbott: No further questions, your Honor.

Mr. Cranston: I believe that is all.

The Court: That is all, Mr. Anderson. We will excuse Mr. Anderson, gentlemen.

Mr. Cranston: Yes, excused.

(Witness excused.)

The Court: Call your next witness.

Mr. Cranston: All right. Mr Sutro. [1001]